

立法會
Legislative Council

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by the Administration)

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**Bills Committee on
Professional Accountants (Amendment) Bill 2004**

**Minutes of the first meeting held on
Friday, 28 May 2004, at 3:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon SIN Chung-kai (Chairman)
Hon Kenneth TING Woo-shou, JP
Dr Hon Eric LI Ka-cheung, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Emily LAU, JP
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBS, JP

Public officers attending : Mrs Clarie LO
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Miss Annie KONG
Assistant Secretary for Financial Services and the Treasury
(Financial Services) (4) 2

Attendance by invitation : Hong Kong Society of Accountants

Mr Roger Best
President

Ms Winnie CHEUNG
Chief Executive & Registrar

Mr F K AU
Legal Representative

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)6

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Rosalind MA
Senior Council Secretary (1)8

Miss Edith CHAN
Council Secretary (1)1

Action

I. Election of Chairman

1. Mr SIN Chung-kai was elected Chairman of the Bills Committee.

II. Meeting with the Hong Kong Society of Accountants and the Administration

(LC Paper No. CB(3) 488/03-04 — Bill gazetted on 19 March 2004

— Legislative Council Brief issued on 24 March 2004

LC Paper No. LS60/03-04 — Legal Service Division Report

LC Paper No. CB(1)1721/03-04 — Report of the Panel on Financial Affairs on the policy issues relating to the Professional Accountants (Amendment) Bill 2004 for the House Committee

meeting on 7 May 2004

LC Paper No. CB(1) 1959/03-04 (01) — Marked-up copy of the Bill

LC Paper No. CB(1)1951/03-04 — Background brief on Professional Accountants (Amendment) Bill 2004 prepared by the Secretariat)

Discussion on major issues relating to the legislative proposals

Consultation with the accounting and auditing profession

2. Ms Audrey EU was concerned whether the accounting and auditing profession considered the legislative proposals in the Bill acceptable, in particular, those relating to the reform of the investigation and disciplinary mechanism. In this connection, she sought information on the consultation by the Hong Kong Society of Accountants (HKSA) with the accounting and auditing profession.

3. Dr Eric LI advised that HKSA was established by law and there was a statutory requirement for any certified public accountant practising in Hong Kong to be registered with HKSA as a member. Hence, HKSA's membership was inclusive of all practising accounting and auditing professionals in Hong Kong. He further advised that HKSA had issued a consultation paper on the proposals under the Bill to its members and a resolution in support of the proposals was passed by the majority of members at a general meeting of HKSA. HKSA also kept members posted of the development of the legislative proposals through reports in its monthly publications.

Payment of costs and expenses involved in the investigation and disciplinary proceedings

4. Ms Audrey EU pointed out that members of the Law Society of Hong Kong had expressed concern about the usually high costs incurred for the investigation and disciplinary proceedings on alleged cases of misconduct, as the costs were recovered from the members concerned irrespective of whether they were found guilty. She was concerned whether HKSA would recover the costs incurred for cases processed by the Investigation Committee (IC) and the Disciplinary Committee (DC) from the members concerned, and whether HKSA members agreed to such cost recovery arrangements. Noting that DC might make such order as it thought fit with regard to the payment of costs and expenses of and incidental to the disciplinary proceedings (proposed section 35(1)(h)), Ms EU was concerned about the costs to be borne by the members concerned, in particular when remuneration might be paid to lay members of IC and DC, the number of which would be increased according to the legislative proposal.

5. Dr Eric LI said that while members who chose to engage lawyers to represent their interest in the disciplinary proceedings might do so at their own cost, the costs for processing cases by IC and DC was normally borne by HKSA and partial recovery might only be made from members concerned after completion of the disciplinary proceedings. HKSA had not recovered any cost from members who were found not guilty. He said that although the existing provisions in the Professional Accountants Ordinance (Cap. 50) (the Ordinance) provided for payment of fees to members of IC, such payment had never been made in the past to members of IC and DC. All lay members had been participating on a voluntary basis. HKSA had no plan to change the existing practice for payment of fees to members of IC and DC. Ms Winnie CHEUNG of HKSA added that the proposed provision for payment of fees to members of DC (proposed section 35A) was made to achieve consistency with the similar provision in respect of payment of fees to members of IC.

6. Responding to Ms EU's further enquiry, Dr Eric LI advised that under the proposed section 35B, for cases involving minor misconduct, HKSA could process the cases through a simplified procedure called the "consent order" so that cost and time involved could be reduced. He undertook to provide supplementary information on the cost involved for processing cases by IC and DC and the cost recovered from the members concerned.

Effectiveness of the current investigation and disciplinary mechanism

7. Ms Emily LAU welcomed the proposals of HKSA to open up its governance structure for improvement of the present regulatory processes enshrined in the law. Noting that there were limitations in the existing power of IC for investigating cases involving parties other than HKSA members, Ms LAU sought information on the effectiveness of IC in handling complaints against misconduct or breaches of professional standards by HKSA members and whether the work of IC could inspire confidence of the investing public towards the accounting and auditing profession.

8. Dr Eric LI advised that under the present legislation, in respect of misconduct cases involving individuals from different professions or in different positions, HKSA only played a part in handling the alleged misconduct of its members. Misconduct of other individuals involved, such as officers of the listed companies or intermediaries, was handled by other regulatory authorities such as the Hong Kong Exchanges and Clearing Limited (HKEx) and the Securities and Futures Commission (SFC). He clarified that the legislative proposals did not seek to expand HKSA's powers on investigation. Instead, the proposals aimed at altering the composition of IC and DC, with the majority of members being lay members, to enhance public oversight of the accounting and auditing profession. At the request of Ms LAU, Dr LI undertook to provide the number of cases handled by the IC and DC in the past few years after the meeting.

9. Responding to Ms Emily LAU's enquiry on the respective roles and functions of IC and DC, Dr Eric LI explained that IC investigated into alleged misconduct or breaches of professional standards by members of HKSA, while DC determined whether a member or member firm of HKSA should be sanctioned and the penalty to be handed down. The HKSA Council constituted the IC and DC by appointing the Chairman, who should in turn appoint the members. All IC and DC members were drawn from the Investigation Panels and Disciplinary Panels respectively.

Establishment of the proposed Independent Investigation Board

10. Responding to Ms LAU's concern about the progress for establishment of the proposed Independent Investigation Board (IIB), Dr LI said that HKSA supported the establishment of an IIB for investigation of cases involving listed companies in the long run. The HKSA Council had also decided to provide funding support in part for the operation of the IIB.

11. The Deputy Secretary for Financial Services and the Treasury (Financial Services) DS(FS) advised that the Administration had briefed the Panel on Financial Affairs at its meeting on 2 April 2004 the progress of its work in relation to the proposed IIB. She said that the drafting of the relevant legislative amendments was expected to be completed in the 2004-05 legislative session. With the support of HKSA, HKEx and SFC, it was expected that the IIB proposal could be implemented without major difficulties. The IIB, when established, would be responsible for handling complaints of misconduct of the accounting and auditing profession where listed companies were involved.

Delegation of powers and duties of the HKSA Council

12. Referring to paragraph 11 of the Legal Service Division report (LC Paper No. LS60/03-04), Mr Kenneth TING doubted whether there should be some restrictions on the person to whom the HKSA Council could delegate its powers or duties under the Ordinance, such as to HKSA members only. Dr Eric LI explained that in exercising the powers and performing duties under the Ordinance, it would be necessary in certain circumstances for HKSA to seek expert advice or assistance, such as from the legal profession.

Comparison of the practices on appointment of lay members to the governing bodies of professional bodies

13. Ms Emily LAU enquired about the practices adopted by other accounting and auditing bodies in overseas jurisdictions, and by other professional bodies in Hong Kong, on the appointment of lay members to their governing bodies. Dr Eric LI said that the accounting and auditing profession in Hong Kong was subject to a self-regulatory regime in which HKSA was established and empowered by law to perform

the regulatory functions. This self-regulatory regime empowered by law was rather unique compared with other professional bodies in Hong Kong.

14. DS(FS) provided preliminary information on the practices adopted by the professional bodies in the accounting and auditing field in the United Kingdom and Australia, where lay members were appointed to committees handling investigation and disciplinary proceedings. As for other professional bodies in Hong Kong, DS(FS) referred to the practice adopted by the Medical Council of Hong Kong where lay members were appointed to the governing body, investigation and disciplinary committees. At the request of Ms LAU, DS(FS) undertook to provide the information to the Bills Committee after the meeting.

(Post-meeting note: The supplementary information requested under paragraphs 6, 8 and 14 was circulated to members vide LC Paper No. CB(1)2037/03-04(01) on 3 June 2004.)

Invitation for public views

15. The Bills Committee agreed that public views on the Bill should be sought, and the Clerk would -

- (a) arrange for the invitation of public views by uploading a general invitation notice onto the website of the Legislative Council; and
- (b) issue letters to all District Councils to invite their views on the Bill.

(Post-meeting note: The invitation note was published on the LegCo Website on 31 May 2004. Letters were also issued to District Councils on the same day.)

III. Any other business

Dates of next meeting

16. The next three meetings of the Bills Committee were scheduled for 4, 7 and 14 June 2004.

(Post-meeting note: Notice of the meetings was issued to members vide LC Paper No. CB(1)1992/03-04 dated 31 May 2004.)

17. There being no other business, the meeting ended at 5:30 pm.

18. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1
Legislative Council Secretariat
21 July 2004

Appendix

**Proceedings of the first meeting of the
Bills Committee on Professional Accountants (Amendment) Bill 2004
on Friday, 28 May 2004, at 3:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000240	Mr Kenneth TING	Election of Chairman	
000241-000255	Chairman	Introductory remarks	
000256-000840	Dr Eric LI	Briefing on the Professional Accountants (Amendment) Bill 2004	
000841-001629	Ms Audrey EU Dr Eric LI	(a) Consultation with the accounting and auditing profession (b) Whether the accounting and auditing profession supported the proposals to reform the investigation and disciplinary mechanism given the possible increase in costs which might be borne by the members concerned (c) Payment of costs and expenses involved in the investigation and disciplinary proceedings	HKSA to provide requested information under paragraph 6 of the minutes
001630-001935	Mr Kenneth TING Dr Eric LI	Delegation of powers and duties of the HKSA Council	

Time marker	Speaker	Subject(s)	Action Required
001936-003658	Ms Emily LAU Dr Eric LI Administration Hong Kong Society of Accountants (HKSA)	(a) Effectiveness of the current investigation and disciplinary mechanism (b) Roles and functions of IC and DC (c) Schedule for establishment of IIB	HKSA to provide the requested information under paragraph 8 of the minutes
003659-004647	Ms Audrey EU Dr Eric LI HKSA Ms Emily LAU	(a) Payment of costs and expenses involved in investigation and disciplinary proceedings (b) Payment of remuneration to lay members appointed to IC and DC	
004648-005348	Ms Emily LAU Dr Eric LI Administration	Comparison of the regulatory regimes of professional bodies	Administration to provide the requested information under paragraph 14 of the minutes
005349-010410	Chairman Ms Emily LAU Clerk Dr Eric LI	Invitation for public views	Clerk to take follow-up actions required under paragraph 15 of the minutes
010411-010607	Chairman Clerk Members	Fixing dates for next three meetings	
010608-010629	Chairman	Bills Committee commenced clause-by-clause examination of the Bill (Marked-up copy) (LC Paper No. CB(1)1959/03-	

Time marker	Speaker	Subject(s)	Action Required
		04(01))	
010630-011051	Chairman Dr Eric LI	Number of lay members to be appointed to the HKSA Council (Section 10(2))	
011052-013225	Assistant Legal Adviser Chairman Dr Eric LI HKSA Ms Emily LAU Administration	<p>(a) Difference between professional accountants and certified public accountants (Section 2)</p> <p>(b) The English name of HKSA would be changed to the “Institute of Certified Public Accountants” while the Chinese name remained unchanged</p> <p>(c) Meaning of the word “reputation” proposed to be added to Section 7(g)</p> <p>(d) Meaning of “corporate practices” proposed to be added to Section 7(h)</p> <p>(e) Making of by-laws by voting of members in person or by proxy (Section 8(3))</p>	
013226-014124	Chairman HKSA Mr Jasper TSANG Dr Eric LI Ms Emily LAU	Establishment and composition of the HKSA Council (Section 10)	
014125-014659	Chairman Administration HKSA Ms Emily LAU	(a) Compulsory retirement of elected members (Section 12)	

Time marker	Speaker	Subject(s)	Action Required
	Dr Eric LI	<p>(b) New section 12(1A) proposed to facilitate transitional arrangements with the proposed increase in the number of elected members to the Council from 12 to 14</p> <p>(c) Number of co-opted members to the Council and the total number of Council members (Section 12(4) and Section 10(2))</p>	
014700-014911	Chairman Dr Eric LI Ms Emily LAU	Chief Executive may appoint a certified public accountant to Council if Council fails to fill a vacancy (Section 14)	
014912-015207	Mr Jasper TSANG Dr Eric LI	Arrangements for election of Council members to ensure the proper composition of elected members set out in Section 10(2)(c), i.e. with no less than 6 certified public accountants in full time practice and no less than 6 certified public accountants otherwise in full time practice	
015208-015552	Chairman HKSA Dr Eric LI Ms Emily LAU Assistant Legal Adviser	<p>(a) Vacancy arose upon the vacation of office by the immediate past President of the HKSA (proposed Section 15(2))</p> <p>(b) Propriety of specifying the total number of members in the Council under Section 10(b)(ii)</p>	HKSA to propose a Committee Stage Amendment to Section 10(b)(ii) by deleting the

Time marker	Speaker	Subject(s)	Action Required
			reference to the total number of members in the Council
015553-015640	Chairman	Date of next meeting	

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