

立法會
Legislative Council

LC Paper No. CB(1)2427/03-04
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by the Administration)

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

**Minutes of the second meeting held on
Friday, 4 June 2004, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Albert HO Chun-yan
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 Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Kenneth TING Woo-shou, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Henry WU King-cheong, BBS, 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. Meeting with the Hong Kong Society of Accountants and the Administration

(LC Paper No. CB(1)2037/03-04 (01) — Supplementary information provided by the Hong Kong Society of Accountants in response to issues raised at the meeting held on 28 May 2004

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

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

LC Paper No. CB(1)1994/03-04(01) — Paper on “Summary of proposed amendments” provided by the Hong Kong Society of Accountants

LC Paper No. CB(1)2037/03-04 (02) — An update on the consultation with relevant Policy Bureaux on consequential amendments to other Ordinances as spelt out in Schedule 2 of the Bill

LC Paper No. CB(1)2037/03-04 (03) — A summary of the draft Committee Stage amendments after the gazettal of the Bill on 19 March 2004 up to 3 June 2004 with details)

1. The Bills Committee discussed matters arising from the last meeting and continued the clause-by-clause examination of the Bill.

Matters arising from last meeting

Costs and expenses involved in the investigation and disciplinary proceedings

2. Ms Audrey EU asked whether the Hong Kong Society of Accountants (HKSA) anticipated any increase in costs and expenses for the investigation and disciplinary proceedings after the implementation of the legislative proposals under the Bill. Ms Winnie CHEUNG of HKSA advised that the costs of the investigation and disciplinary proceedings mainly varied according to the complexity of the cases. Where the members concerned decided to engage lawyers to represent them in the proceedings, HKSA would probably need to engage legal advisers correspondingly and this would give rise to higher costs. Ms CHEUNG and Dr Eric LI advised that HKSA did not anticipate that the proposals in the Bill on their own would give rise to additional costs of the investigation and disciplinary proceedings. In particular, the proposals would not necessitate additional staffing support for the Investigation Committees and Disciplinary Committees and the staffing costs would continue to be absorbed by HKSA.

Handling of complaints on misconduct by HKSA Council

3. Mr Albert HO noted from the supplementary information provided by HKSA that in one of the completed cases handled by the Investigation Committee in 1998, the member concerned was reprimanded. He sought information on the handling of minor complaints, including the number of cases involving minor breaches which had not been referred to the Disciplinary Panel for hearings but the Council issued some form of written warning to the member concerned.

4. Ms Winnie CHEUNG of HKSA explained that under the current investigation and disciplinary mechanism, the Council would refer a complaint to the Disciplinary

Panel if, after investigation, it was found that the complaint fell within the scope of section 34 of the Professional Accountants Ordinance (Cap. 50). The Council might issue disapproval letters to the member concerned only in case of minor breaches outside the scope of section 34. She advised that the “consent order” mechanism proposed under new section 35B would allow the Disciplinary Committee to handle complaint concerning about minor breaches without hearing either the complainant or the certified public accountant (CPA), subject to the consent of both parties to the proposed orders made by Disciplinary Committee. She further explained that to increase public oversight of the process of handling complaints, a new subsection (1AAA) of section 34 was proposed to allow a complainant aggrieved by a HKSA Council’s decision not to refer a complaint to a Disciplinary Committee to request a Disciplinary Committee to be constituted to enable him to present his case directly to the Committee. At the request of Mr Albert HO, Dr Eric LI undertook to provide supplementary information on the number of minor complaints that had not been referred to a Disciplinary Committee but for which a disapproval letter had been issued by the Council, as well as the number of cases which had been referred to the Investigation Committee and/or the Disciplinary Committee and had been subject to judicial review.

Clause-by-clause examination of the Bill

Expansion in the HKSA Council’s power

5. Proposed new section 18B seeks to empower the HKSA Council to give directions either generally to CPAs or to any one or more CPA in connection with the discharge of any of its functions or duties or the exercise of any of its powers. Mr Albert HO was concerned that the power conferred on the Council to require a CPA to give an explanation of any act or omission of the CPA in relation to his conduct or practice as a CPA under section 18B(1)(c)(i) was too extensive, as the power was not qualified by any grounds for the requirement to give explanation.

6. In response, Ms Winnie CHEUNG of HKSA explained that the power stipulated in section 18B(1)(c) was intended to enable the Council to obtain the necessary information for investigation of complaints against HKSA members. Dr Eric LI appreciated Mr HO’s concern and undertook to consider amending the provision such that the Council might require an explanation from a CPA only in response to an inquiry from an outside party and for investigation of complaints. Mr Roger BEST of HKSA added that apart from outside parties, very often, the Registrar of HKSA was the complainant of cases of misconduct or breaches. Hence, the Council should also be empowered to require an explanation where the Registrar of HKSA had raised an enquiry on suspected cases of misconduct or breaches. The Bills Committee noted that HKSA would propose a Committee Stage amendment to section 18B(1)(c) to clearly define the application of the power.

7. Proposed section 30(9) seeks to empowered the Council to suspend or cancel the practising certificate of a CPA if he fails to comply with any of the conditions stipulated in subsection (8) for continuing professional development. Mr Albert HO stressed the importance of a due process before the Council made such a decision. Dr Eric LI advised that the requirements for continuing professional development a CPA had to comply with for the issuance of a practising certificate were specified in the existing provisions in the Ordinance and all CPAs holding practising certificates were well-aware of these requirements. Moreover, they would be given the opportunity to make representations before the Council made a decision to suspend or cancel their practising certificates.

8. The Assistant Legal Adviser 6 advised that the power of the HKSA Council to suspend or cancel the practising certificate of a CPA under proposed section 30(9) was confined to the circumstances where a CPA failed to comply with HKSA's requirements for continuing professional development. Those CPAs aggrieved by the Council's decision could appeal against the decision and the principles of natural justice would apply to the exercise of the power by the Council.

Appointment of lay members to the proposed Disciplinary Panel A

9. Referring to the proposal of the establishment of a Disciplinary Panel A with not less than 18 lay members to be appointed by the Chief Executive (proposed amendments to section 33(1)), Ms Emily LAU enquired if the Administration had any plan at this stage about the future composition of the Panel. She was also concerned whether timely appointments would be made by the Chief Executive to enable early commencement of operation of the amendments in the Bill upon enactment. The Deputy Secretary for Financial Services and the Treasury (Financial Services) (DSFS) advised that the Administration was considering the arrangements for appointment of lay members to the Disciplinary Panel A and details on the potential candidates for appointment were not available at this stage. At the request of Ms LAU, DSFS agreed to explore whether the Administration was able to provide more information in this regard. Ms Winnie CHEUNG of HKSA also undertook to provide the membership of the existing Disciplinary Panel for members' information.

(Post-meeting note: Supplementary information provided by HKSA as requested in paragraphs 4 and 9 above was issued to members vide LC Paper No. CB(1)2506/03-04(01) on 8 June 2004. The Administration provided further information as requested in paragraph 9 above at the meeting held on 14 June 2004.)

II. Any other business

Dates of next meeting

10. Members noted that the next meeting would be held on Monday, 7 June 2004 at 10:45 am. The Bills Committee would continue the clause-by-clause examination of the Bill.

11. There being no other business, the meeting ended at 10:30 am.
12. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1
Legislative Council Secretariat
21 July 2004

**Proceedings of the second meeting of the
Bills Committee on Professional Accountants (Amendment) Bill 2004
on Friday, 4 June 2004, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000034	Chairman	Welcoming and introductory remarks	
000035 - 000437	Chairman Administration Hong Kong Society of Accountants (HKSA) Ms Emily LAU Dr Eric LI	(a) Practice of overseas accountancy bodies and other professional bodies in Hong Kong on the appointment of lay members to their governing, investigation and disciplinary bodies [<i>Appendix I of CB(1)2037/03-04 (01)</i>] (b) HKSA's explanation that the increase in lay members to its Council, the Investigation Committee (IC) and Disciplinary Committee (DC) would increase transparency of its operation and enhance public oversight over the conduct and work of the accounting and auditing profession	
000438 - 001013	Chairman Ms Emily LAU Dr Eric LI Ms Audrey EU HKSA	The costs and expenses awarded against HKSA members on disciplinary cases heard over the last two years [<i>Appendix 2 of CB(1)2037/03-04 (01)</i>]	

Time marker	Speaker	Subject(s)	Action Required
001014 - 002502	Chairman Ms Emily LAU Dr Eric LI HKSA Mr Albert HO	<p>(a) Information on cases handled by IC and DC in the last six years <i>[Appendix 3 of CB(1)2037/03-04 (01)]</i></p> <p>(b) Members noted that while cases were referred by other regulators such as the Hong Kong Exchanges and Clearing Limited and the Securities and Futures Commission to HKSA for investigation, HKSA would act as the complainant of these cases during the disciplinary proceedings</p> <p>(c) Members noted that under the existing investigation and disciplinary mechanism, the Council might issue disapproval letters to members who had committed minor misconduct instead of referring these minor cases to the Disciplinary Panel. To simplify the disciplinary proceedings, a “consent order” mechanism was proposed under the Bill for handling minor complaints</p> <p>(d) Members’ concern about the number of cases referred to IC/DC that had been subject to judicial review</p>	<p>HKSA to provide the requested information under paragraph 4 of the minutes</p> <p>HKSA to provide the requested information under paragraph 4 of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
002503 - 002829	HKSA	<p>(a) Briefing by HKSA on “An update on the consultation with relevant Policy Bureaux on consequential amendments to other Ordinances as spelt out in Schedule 2 of the Bill” <i>[CB(1)2037/03-04 (02)]</i></p> <p>(b) Briefing by HKSA on “A summary of the draft Committee Stage amendments (CSAs) after the gazettal of the Bill” <i>[CB(1)2037/03-04 (03)]</i></p>	
002830 - 003253	Chairman Dr Eric LI HKSA Ms Audrey EU Ms Emily LAU	<p>(a) The Bills Committee continued clause-by-clause examination of the Bill (The blue Bill and the English version of the marked-up copy <i>[CB(1)1959/03-04(01)]</i>)</p> <p>(b) Members noted that amendments to section 16 (Accounts) (clause 14) were proposed for cost saving purpose. The amendments allowed HKSA to provide a summary of financial statements to each member with the notice of the annual general meeting instead of the current requirement of sending a copy of the signed and audited statement of accounts and auditor’s report to all members. Members also noted that HKSA would provide the signed and audited statement of accounts without charge to any of its members upon request.</p>	

Time marker	Speaker	Subject(s)	Action Required
003254 - 003425	Chairman HKSA	<p>(a) Proposed amendments to section 17 (General powers of Council)</p> <p>(b) Proposed amendments to section 18A (Council's power to specify professional standards) (Clause 15)</p>	
003426 - 004741	Chairman HKSA Ms Audrey EU Mr Albert HO Dr Eric LI Mr Abraham SHEK	<p>Proposed new section 18B (Council's power to give directions) (Clause 16)</p> <p>Members noted the following points of clarification made by HKSA -</p> <p>(a) A certified public accountant (CPA) meant a person registered by virtue of section 22 of the Professional Accountants Ordinance (PAO) (Cap. 50) and a CPA (practising) was a CPA holding a practising certificate</p> <p>(b) While practising certificates had to be renewed with HKSA on an annual basis subject to the compliance of statutory requirements stipulated in PAO and the payment of a fee, the practising certificates did not bear an expiry date. Hence, it was necessary for the Council to have power to require a CPA to deliver up to HKSA any practising certificate which had been cancelled or ceased to be valid</p>	

Time marker	Speaker	Subject(s)	Action Required
004742 - 005135	Chairman Mr Albert HO HKSA Dr Eric LI	Members' concern that the scope under section 18B(1)(c)(i) for HKSA to require a CPA to give an explanation to HKSA was not subject to any qualification	HKSA to propose a CSA to section 18B(1)(c)(i) as required under paragraph 6 of the minutes
005136 - 005509	Ms Audrey EU HKSA Chairman Mr Albert HO	Members noted that the penalty provision under section 18B(3) served to provide a standard penalty to facilitate handling of cases of non-compliance with the direction given by the Council	
005510 - 005635	Chairman HKSA	(a) Proposed amendments to sections 19 to 21 (b) Proposed new section 22(4) (Clause 17) to facilitate the conversion of the register of professional accountants to the register of CPA with effect from a relevant date	
005636 - 010008	Chairman HKSA Mr Albert HO	Proposed amendments to section 24 (Qualification of registration as professional accountants) (Clause 18)	
010009 - 010225	Chairman HKSA	(a) Proposed amendments to section 26 (Acceptance or refusal of registration) (Clause 19) (b) Proposed amendments to section 27 (Removal from register of certain persons) (Clause 20)	

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) Members noted that the proposed amendments to section 28(2)(a) provided the Council with the power to extend the period allowed for renewal of registration so as to provide flexibility to handle late applications from members such as those working in the Mainland (Clause 21)</p>	
010226 - 011151	<p>Chairman HKSA Mr Albert HO Dr Eric LI Ms Emily LAU ALA6</p>	<p>(a) Members noted that the proposed amendments to subsection (5) of section 28A (Registration of firm name) (Clause 22) served to empower the Council to prescribe the proportion of CPA and CPA (practising) in the partnership of a firm</p> <p>(b) Members' concern about the clarity in the drafting of the proposed amendments to section 28A(5)</p> <p>(c) ALA's advice that the proposed section 28A(6) was</p>	<p>HKSA to propose a CSA to section 28A(5) by deleting "certified public accountant or accountants (practising)" and substituting "certified public accountant (practising) or certified public accountants (practising)"</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>required because partners of a firm of CPA were in general entitled to sign documents on behalf of the firm, but the policy was that partners not holding a practising certificate could not sign an audit report on behalf of the firm</p>	
011152-011635	<p>Chairman HKSA Dr Eric LI Mr Albert HO Ms Emily LAU</p>	<p>Members considered the proposed amendments to the following sections of PAO -</p> <ul style="list-style-type: none"> (a) Section 28B (Application for registration of a firm) (Clause 23) (b) Section 28C (Provisions of sections 22, 23, 26, 27, 28, 39 and 41 to apply to firms) (Clause 24) to amend the section heading (c) Section 28D (Qualification for registration of company as corporate practice) (Clause 25) (d) Section 28G (Provisions of sections to apply to a company) (Clause 26) (e) Section 29 (Requirements to practise as a certified public accountant or public accountant) (Clause 27) to amend the section heading 	
011636 - 012033	<p>Chairman HKSA Ms Emily LAU Dr Eric LI</p>	<p>Members noted that the proposed subsection (1B) to section 29A (Requirements for issue of a practising certificate) (Clause 28)</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>served to empower DC to make an order of not issuing a practising certificate to an applicant in addition to the existing power of canceling the registration of the member concerned</p>	
012034 - 013542	<p>Chairman HKSA Ms Emily LAU Dr Eric LI Mr Albert HO ALA6</p>	<p>(a) Proposed amendments to section 30 (Practising certificates) (Clause 29)</p> <p>(b) Members noted that under the proposed section 30(7), the Council should not issue a practising certificate to a CPA who had become bankrupt but the professional qualification of the CPA concerned would not be affected</p> <p>(c) HKSA advised that if a CPA was convicted of a criminal offence or had committed serious misconduct, DC might order that his registration be removed or cancelled</p> <p>(d) Discussion on proposed section 30(9) for the Council to suspend or cancel the practising certificate of a CPA who failed to comply with the requirements for continuing professional development</p>	
013543 - 013803	<p>Chairman HKSA</p>	<p>Members considered the proposed amendments to the following sections of PAO -</p> <p>(a) Section 31 (Registered office) (Clause 30)</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Section 32 (Publication of list of professional accountants holding practising certificates and list of firms and evidence of same) (Clause 31) to amend the section heading</p> <p>(c) Section 32C (Conduct of practice reviews) (Clause 32)</p> <p>(d) Section 32D (Powers of the Practice Review Committee) (Clause 33)</p>	
013804 - 014334	<p>Chairman HKSA Mr Albert HO Dr Eric LI Ms Emily LAU</p>	<p>(a) Members noted that proposed new section 32I (Change in composition of practice unit) (Clause 34) was added to avoid dispute where change in composition of a practice unit occurred when a practice review was being conducted</p> <p>(b) HKSA's advice that practice reviews were conducted in respect of all practice units in a random order. While practice reviews were not conducted for investigation of misconduct, misconduct or breaches of professional standards detected during the reviews would be referred to the Council for appropriate disciplinary proceedings</p>	
014335 - 015859	<p>Chairman HKSA Mr Albert HO Ms Emily LAU</p>	<p>Members' concern about the potential candidates for appointment as lay members by the Chief Executive to the proposed</p>	<p>The Administration to take follow-up action requested under paragraph 9</p>

Time marker	Speaker	Subject(s)	Action Required
	Administration Dr Eric LI	Disciplinary Panel A proposed under amendments to section 33 (Disciplinary Panel) (Clause 35) as well as the time required for the establishment of the Panel after enactment of the Bill	of the minutes HKSA to provide the information under paragraph 9 of the minutes
015900 - 020007	Chairman Dr Eric LI	Date of next meeting	

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21 July 2004