

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2428/03-04  
(These minutes have been seen  
by the Administration)

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

**Minutes of the third meeting held on  
Monday, 7 June 2004, at 10:45 am  
in the Chamber of the Legislative Council Building**

**Members present** : Hon SIN Chung-kai (Chairman)  
Hon Albert HO Chun-yan  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Emily LAU, JP  
Hon Henry WU King-cheong, BBS, JP

**Members absent** : Hon Kenneth TING Woo-shou, JP  
Dr Hon Eric LI Ka-cheung, GBS, JP  
Dr Hon David LI Kwok-po, GBS, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Audrey EU Yuet-mee, SC, 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

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Action

**I. Meeting with the Hong Kong Society of Accountants and the Administration**

(LC Paper No. CB(1)2056/03-04 (01) — Supplementary information provided by the Hong Kong Society of Accountants in response to issues raised at the meeting on 4 June 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 (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 the last meeting

2. The Bills Committee noted that a paper on “Supplementary information provided by the Hong Kong Society of Accountants in response to issues raised at the meeting on 4 June 2004” was tabled at the meeting.

*(Post-meeting note: The paper was circulated to members vide LC Paper No. CB(1)2056/03-04 on 8 June 2004.)*

Clause-by-clause examination of the Bill

*Payment of fees to members of Investigation Committee and Disciplinary Committee*

3. Members noted that proposed new section 35A (Payment of fees to members of Disciplinary Committee) was modeled on the existing provision (section 42F) in the Professional Accountants Ordinance (PAO) (Cap. 50) for the payment of fees to members of the Investigation Committee (IC). In response to members’ enquiry about HKSA’s plan for the payment of fees, Ms Winnie CHEUNG of the Hong Kong Society of Accountants (HKSA) said that HKSA considered that the existing arrangement to allow the payment of fees to members of Investigation Committees should be consistently applied to members of Disciplinary Committees. Despite the existing provisions for the payment of fees to members of IC, such payment had never been made in the past. All members of IC had been participating on a voluntary basis and at this stage, HKSA had no plan to change the existing practice. Mr Roger BEST of HKSA added that while HKSA had no intention to change the existing practice for members of IC and DC to participate on a voluntary basis, the possibility of making such payment in future could not be ruled out. Mr Albert HO supported the proposed new provision to enable HKSA to make payment to members of IC and DC when need arose or the circumstances warranted such payment. He said that the experience of other professional bodies, such as the Law Society of Hong Kong, had shown that in the absence of similar provisions, payment to members participating in disciplinary proceedings could not be made even under justified circumstances.

4. Noting that under proposed section 35A, if payment of fees was to be made, such payment should be made at such rates as the HKSA Council may from time to

time fix, Mr Jasper TSANG enquired about how the rates would be determined. Mr Roger BEST of HKSA advised that there were no fixed rates for payment of fees to members of IC at present. As HKSA did not anticipate any need for payment of fees to members of IC and DC in the near future, HKSA considered it preferable that the rates for such payment be worked out when the need arose. In determining the rates, HKSA would make reference to the practice adopted by other committees or tribunals performing similar functions. Ms Winnie CHEUNG of HKSA added that as the fees would be paid out of the funds contributed by HKSA members, HKSA would be accountable to its members in regard to the rates and other arrangements for the payment of fees to members of IC and DC.

*Proposed disciplinary proceedings*

5. Mr Jasper TSANG noted that under the proposed “consent order” mechanism, if the complainant or the certified public accountant (CPA) did not consent to the order or orders proposed by the DC, or if the DC considered that the consent from either party was not forthcoming, the DC should be dissolved and the Council should constitute a new DC to deal with the complaint (new section 35B(4)). Mr TSANG sought clarification on the rationale for the proposed arrangement. Mr F K AU of HKSA explained that the proposed arrangement to dissolve the existing DC and constitute a new DC to deal with the complaint was to avoid the subsequent disciplinary proceedings being prejudiced by the formed views of the preceding DC. Consideration of the complaint by a new DC afresh would be a fair arrangement for both the complainant and the CPA concerned. Responding to Mr TSANG’s further enquiry, Mr F K AU of HKSA explained that the new DC could not use the “consent order” mechanism to deal with the complaint; it was stipulated in proposed section 35B(4)(d) that the new DC “shall deal with the complaint afresh without regard to this section [section 35B] and accordingly, it shall not have any regard to any proceedings of the dissolved committee, including ...”.

6. Proposed section 36(1A) provides that every hearing of DC shall be held in public unless on its own motion or on application of the complainant or CPA concerned, the DC determines that in the interests of justice a hearing or any part thereof shall not be held in public. Mr Albert HO was concerned whether HKSA members when consulted on the proposal were made fully aware of the implications of this proposal. He was particularly concerned that public hearings might subject the member concerned to premature publicity and this might tarnish the reputation of an innocent member. Ms Winnie CHEUNG of HKSA responded that the proposal was one of HKSA’s initiatives to assuage any possible concern about the apparent lack of transparency and any perception that HKSA’s regulatory disciplinary process is too “cosy”. She advised that HKSA had conducted extensive consultation with its members on the legislative proposals under the Bill and the proposals were supported by the majority of members with the passing of a resolution at a general meeting of HKSA. Mr Roger BEST of HKSA added that while the proposal of public hearing was supported by the majority of HKSA members, some members did raise concerns

similar to those raised by Mr HO. In response to Mr HO's suggestion, Mr Roger BEST of HKSA said that subject to the Bills Committee's view, further consideration could be made in amending section 36(1A) so that closed disciplinary hearings would be the norm unless on the DC's own motion or on the application of the complainant or the CPA concerned. Mr BEST and Ms Winnie CHEUNG of HKSA undertook to provide information on the consultation with HKSA members in relation to the proposal.

*(Post-meeting note: The supplementary information provided by HKSA was issued to members vide LC Paper No. CB(1)2115/03-04(01) on 11 June 2004.)*

7. In response to Mr Albert HO's further enquiry, Ms Winnie CHEUNG of HKSA said that while HKSA had not made comparison with the practices adopted by other professional bodies in Hong Kong in respect of their disciplinary proceedings, its members were generally supportive to the proposal of holding disciplinary hearings in public for enhancing the transparency of HKSA's regulatory disciplinary process. The Deputy Secretary for Financial Services and the Treasury (Financial Services) (DSFS), quoting the example of the Medical Council of Hong Kong, said that the Medical Council could decide whether the inquiry should be open to the public or held in camera and so far most of its hearings were held in public.

*Proposed amendments to Professional Accountants By-laws to facilitate voting by electronic communication*

8. Proposed amendments to section 3 of the Professional Accountants By-laws seek to enable the HKSA Council to accept casting of votes by electronic communication for the election of members of the Council. Ms Emily LAU commented that the security and reliability of the relevant voting system must be ascertained before the implementation of voting by electronic communication. Ms Winnie CHEUNG of HKSA advised that HKSA attached great importance to the design of the voting system to ensure security and reliability and hence a fair and proper election process. For this purpose, HKSA had involved its auditor in overseeing the design of the system, who had endorsed the framework of the system design before a consultant was engaged for the system development. She assured members that adequate testing of the system would be conducted before the next election of the HKSA Council, which would be held in October/November 2004.

9. Ms Emily LAU pointed out that as the Bills Committee was not provided with the details of the electronic voting system at this stage, it should be put on record that the Bills Committee noted the proposed provisions to enable the casting of vote by electronic communication but the technical aspects for implementation of the proposal had yet to be sorted out by HKSA. The Bills Committee had not been consulted in this regard. In response to Ms LAU, DSFS said that the Administration was confident that HKSA would resolve all technical issues in a prudent manner before implementation of the system for voting by electronic communication.



Follow-up actions to be taken by the Assistant Legal Adviser

10. As directed by the Chairman, the Assistant Legal Adviser 6 undertook to examine whether there were provisions in other ordinances comparable to the “immunity” provisions in the PAO and the Bill affording immunity to members of IC, DC and the Council.

*(Post-meeting note: ALA6 provided the advice to the Bills Committee as required in paragraph 10 at the meeting held on 14 June 2004.)*

**II. Any other business**

Dates of next meeting

11. Members noted that the next meeting would be held on Monday, 14 June 2004 at 8:30 am. The Bills Committee had completed the clause-by-clause examination of the Bill and would examine further proposed Committee Stage amendments provided by HKSA at the next meeting.

12. There being no other business, the meeting ended at 12:32 pm.

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

Council Business Division 1  
Legislative Council Secretariat  
21 July 2004

## Appendix

**Proceedings of the third meeting of the  
Bills Committee on Professional Accountants (Amendment) Bill 2004  
on Monday, 7 June 2004, at 10:45 am  
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000304	Chairman Hong Kong Society of Accountants (HKSA)	Briefing by HKSA on “Supplementary information provided by HKSA in response to issues raised at the meeting on 4 June 2004” <i>[CB(1)2056/03-04 (01)]</i>	
000305 - 001017	Chairman HKSA Chairman HKSA	<b>Clause-by-clause examination of the Bill</b> <i>[CB(1)1959/03-04(01)]</i>  (a) Members noted that proposed subsection (1AAA) to section 34 (Disciplinary provisions) (Clause 36) enabled a complainant to request referral of his complaint to the Disciplinary Panels  (b) Proposed amendments to section 35(Disciplinary powers of Disciplinary Committee) (Clause 37)	
001018 - 001856	Chairman HKSA Ms Emily LAU Mr Albert HO Mr Jasper TSANG	Proposed new section 35A (Payment of fees to members of Disciplinary Committee) (Clause 38)	
001857 - 002649	Chairman HKSA Mr Jasper TSANG ALA6	Proposed new section 35B (Consent order) (Clause 38)	



Time marker	Speaker	Subject(s)	Action Required
002650 - 003335	Chairman HKSA Mr Albert HO Administration	<p>(a) Proposed amendments to section 36 (Powers of Disciplinary Committee with regard to obtaining evidence and the conduct of proceedings) (Clause 39)</p> <p>(b) Members' concern about the effect of premature publicity on the reputation of the CPA concerned if hearings of DC were held in public</p>	HKSA to provide the requested information under paragraph 6 of the minutes
003336 - 004230	Chairman HKSA	<p>Members examined the proposed amendments to the following -</p> <p>(a) Section 37 (Conduct of proceedings and legal representation) (Clause 40)</p> <p>(b) Section 38 (Provisions relating to orders of the Disciplinary Committee) (Clause 41)</p> <p>(c) Section 41(Appeals) (Clause 42)</p> <p>(d) Section 41A (Application of disciplinary provisions to firms) (Clause 43)</p> <p>(e) Section 41B (Immunity) (Clause 44)</p> <p>(f) Section 42B (Investigation Panel) (Clause 45)</p> <p>(g) Section 42C (Appointment of Investigation Committee) (Clause 46)</p>	

Time marker	Speaker	Subject(s)	Action Required
004231 - 004804	Chairman HKSA Ms Emily LAU	Members noted that the proposed amendments to subsection (2) of section 42D (Powers of Investigation Committee as regards its proceedings) (Clause 47) were made to facilitate investigation of complaints by IC in requiring information from the employees of a firm of CPA. As to the concern about how HKSA might compel a non-member to provide information or explanation to assist IC in an enquiry under the proposed new subsection (2), HKSA explained that it did not have the power of sanction to compel information from a non-member. However, section 42D(3) provided legal protection to a person who complied with the requirement of IC under section 42D(1) so that the compliance would not incur any liability to any other person.	
004805 - 004906	Chairman HKSA	Members examined the proposed amendments to the following -  (a) Section 42F (Payment of fees to members of Investigation Committee)  (b) Proposed new section 42H (Immunity) (Clause 48)	
004907 - 005408	Chairman HKSA ALA6 Ms Emily LAU	Members noted the proposed amendments to section 42 (Offences and penalties) (Clause 49) to effect the change of name of “professional accountant” to “certified public accountant”	

Time marker	Speaker	Subject(s)	Action Required
005409 - 005512	Chairman HKSA	<p>Members examined the proposed amendments to the following -</p> <p>(a) Section 43 (Construction of references to auditors) (Clause 50) to be repealed</p> <p>(b) Section 45 (Fees and expenses) (Clause 51)</p> <p>(c) Section 51 (Power of Council to make rules) (Clause 52)</p>	
005513 - 005649	Chairman HKSA Ms Emily LAU	<p>Members noted that the provisions for the Council to delegate its powers or duties set out in the proposed new section 52 (Council may delegate) (Clause 53) did not provide any additional power to the Council as there were already general provisions under section 18(1)(i) and (m) enabling the Council to delegate its powers or duties</p>	
005650 - 005746	Chairman HKSA ALA6	<p>Proposed new section 53 (Immunity for the members of the Council, etc.) (Clause 53)</p>	<p>ALA6 to take follow-up action as requested under paragraph 10 of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
005747 - 010000	Chairman HKSA	Members examined the consequential amendments to the Ordinance (Clause 54) by repealing “professional accountant” and substituting “certified public accountant”	
010001 - 012907	Chairman HKSA Ms Emily LAU Administration Mr Albert HO ALA6	(a) Members examined the proposed amendments to the Professional Accountants By-laws (Clause 55) (Schedule 1)  (b) Members’ concern about the implementation and security of the system being developed for the casting of votes by electronic communication (Proposed subsection (7) of section 3 of the Professional Accountants By-laws)	
012908 - 013355	Chairman HKSA	Members examined consequential amendments to other Ordinances (Clause 56)(Schedule 2)	
013356 - 014416	Chairman HKSA ALA6	Members considered the proposed Committee Stage amendments provided by HKSA [CB(1)2037/03-04 (03)]	
014417 - 014535	Chairman Ms Emily LAU	Date of next meeting	

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