

**Supplementary information provided by
Hong Kong Society of Accountants
in response to issues raised at the 3rd meeting of
the Bills Committee on Professional Accountants (Amendment) Bill 2004
held on Monday, 7 June 2004**

Consultation with HKSA members in relation to the public hearing proposal

- (1) In September 2000, the HKSA Council issued a White Paper to all HKSA members (approximately 20,000) as well as interested parties inviting them to comment on, inter alia, the proposal for all disciplinary hearings to be held in public. An extract of the relevant section of the White Paper is attached at Appendix 1. HKSA received a total of 8 submissions on the issue from members, of which 2 expressed agreement and 6 expressed disagreement to the proposal.
- (2) Council subsequently issued a Response Paper in June 2001 to all members summarising the issues raised. An extract of the relevant paragraphs of the Response Paper relating to open hearings is attached at Appendix 2. After taking into account the submissions received, the Council decided that public hearings should be the norm because:
 - (i) Public hearings provide transparency on the Society's disciplinary processes. Public hearings are consistent with the requirements of Article 10 of section 8 of the Hong Kong Bill of Rights Ordinance and will also ensure that justice is not only done but is also seen to be done.
 - (ii) The risk of premature publicity affecting members is no greater than the risk inherent in the publicity surrounding open court hearings.
 - (iii) A Disciplinary Committee already has the power to open a hearing to the public under the existing rules. The change makes public hearings the norm rather than the exception.
- (3) An Extraordinary General Meeting ("EGM") of the HKSA was convened on 7 July 2003 at which a Resolution containing numerous proposals including making open disciplinary hearings the norm, was laid. A total of 568 votes were cast of which 515 votes were cast in favour of the Resolution and 53 votes against. A copy of the EGM notice is attached at Appendix 3.

Extract from the White Paper on the Proposed Changes to the
Disciplinary Committee Proceedings Rules and Other Regulatory Matters
(September 2000)

9 RECOMMENDATIONS RELATING TO THE CONDUCT OF DISCIPLINARY HEARINGS

9.1 All disciplinary hearings should be held in public

- 9.1.1 The existing Proceedings Rules provide for hearings to be held in camera unless the Disciplinary Committee decides otherwise (Rule 11).
- 9.1.2 One reason for holding hearings in camera has been to protect confidential information of innocent third parties. The Task Force has noted that holding hearings in public is in line with the international trend. It is also consistent with our community's expectation for greater transparency in the administration of judicial and quasi-judicial functions. Furthermore, it is in keeping with the spirit of our Bill of Rights (Cap 383) which provides for court hearings to be normally held in public.
- 9.1.3 On the point of confidentiality, the Task Force observes that even in a public hearing, the public would not have free access to papers submitted although some parts of those papers may be referred to during the course of a hearing. In this regard, the Task Force does not see any difference between the hearing of a professional tribunal and the hearing in an open court.
- 9.1.4 *The Task Force recommends that disciplinary hearings should normally be held in public, in order that justice is not only done but also seen to be done. Accordingly, the Task Force recommends Council to amend Rule 11 of the Proceedings Rules to make public hearing the norm. The Task Force also recommends that Council should lay down the circumstances in which hearings are to be held in camera, along the lines of Article 10 of the Hong Kong Bill of Rights.*

Extract from the Response to Consultation Submissions on the White Paper
on the Proposed Changes to the Disciplinary Committee Proceedings Rules
and Other Regulatory Matters
(June 2001)

PART C: COMMENTS ON RECOMMENDATIONS RELATING TO THE CONDUCT OF HEARINGS

9. Holding hearings in public to be the norm

9.1 *White Paper proposal:*

A change to public hearings to be the norm, except in exceptional circumstances anticipated in the Hong Kong Bill of Rights.

9.2 This was the most controversial area that solicited the greatest response from commentators. As a regulatory body established under a statute, the Society's primary functions are to protect the interest of the general public, who are users or potential users of the services of professional accountants, and to be accountable to the general public. Being a self-regulatory body established under the Professional Accountants Ordinance (the "PAO") does not diminish the Society's public responsibility and accountability, but rather requires the Society to put the interest of the public before the private interests of its own members. In fact, because of the very existence of private interests of its own members, there is all the more reason for a self-regulatory body like the Society to maintain a high degree of transparency in order to demonstrate to the public that it is discharging its regulatory functions, responsibly by treating its members impartially. The Society has, over the years, earned great respect from the Government,

the judiciary and members of the general public in its regulatory decisions. We should therefore enhance this respect by opening up the disciplinary proceedings to the public, in order to assuage any possible concern about the apparent lack of transparency and any perception, justified or otherwise, that our regulatory disciplinary process is too 'cosy'.

- 9.3 There were concerns expressed that public hearings may subject our members to premature publicity and that this would tarnish the reputation of an innocent member. There were also suggestions that where both parties to the complaint agree, the hearing should be held in camera.
- 9.4 The risk of premature publicity adversely affecting innocent members is no greater than the risk inherent in the publicity surrounding open court hearings. The Society finds it difficult to justify why professional accountants should be treated differently from other members of the general public, especially where the public generally hold professional accountants in high esteem and frequently put them in positions of trust.
- 9.5 In addition, public hearings will provide an opportunity for our own members and the public to understand how the Society's disciplinary decisions are determined. The conduct of hearings in public will ensure that justice is not only done but is also seen to be done.
- 9.6 Quite understandably, some members raised concerns that public hearings would breach client confidentiality rules. In connection with this, members should note that under the existing Proceedings Rules, a Disciplinary Committee already has the power to open a hearing to the public. The fact that no Disciplinary Committee has chosen to hold a hearing in public over the years is therefore not a matter of law but a matter of choice. The recommendation of the White Paper was simply to redraw the line to make public hearings the norm rather than the exception. On this point, it is important to note that public hearings are now the norm in all major accountancy bodies overseas, and from their experience, client confidentiality is not a problem that cannot be overcome.
- 9.7 On the protection of confidential information obtained by the Society during disciplinary proceedings, it should be noted that whether or not a disciplinary hearing is held in public, the Society, unless compelled by the due process of law, has no obligation or right to afford third parties access to the underlying documentary evidence. Our legal adviser has advised that a third party has to apply to the Court to subpoena any evidence used in our disciplinary proceedings.

- 9.8 The desire to protect the privacy of innocent third parties has to be balanced against the need to maintain a high degree of transparency in a quasi-judicial process. Transparency will in fact serve to protect the member concerned by opening the disciplinary process to public scrutiny, and is consistent with the requirements of the Bill of Rights enshrined in the Basic Law of the HKSAR. The public is very sensitive to any attempts by regulators to shield aspects of their regulatory proceedings from public knowledge. Recent negative press reports on decisions and practices of the regulatory process and decisions of other professional bodies are an indication of public sentiment.
- 9.9 A commentator also suggested that instead of holding hearings in public, transparency could be achieved sufficiently by laying down clear and detailed disciplinary procedures. The Council has some difficulty with this view: it is one thing that clear and detailed disciplinary procedures exist, it is quite another to show that such procedures are applied (or are seen to be applied). Indeed, the distinction between these two aspects is one main reason for the adoption of open court hearings in the judicial process.
- 9.10 There was a general expectation amongst the commentators that the dividing line between public hearing and private hearing has to be clearly drawn. The Council agrees with the suggestion of the Task Force that guidelines should be laid down for such purposes along the lines of Article 10 of the Hong Kong Bill of Rights. The main reason is that the Court is increasingly expecting a professional tribunal to closely follow court procedures in conducting disciplinary hearings. To draw a line elsewhere may expose the Society to higher risk of legal challenges in the future.
- 9.11 Based on the above considerations, the Council has decided that the proposal in the White Paper to open up hearings to the public, which is consistent with Article 10 of the Hong Kong Bill of Rights, should in future be adopted for all disciplinary hearings. In reaching the above decision, the Council has taken into account the fact that public hearings are in line with the international trend and the expectations of the public for greater transparency.
- 9.12 In considering the submissions on the White Paper, and in particular those dealt with in this section, the Council observed that there is a general lack of understanding of the Society's regulatory process. This is understandable as the majority of the Society's members have not had, and hopefully will not have to have, any experience in dealing with the Society on disciplinary matters. Although the provisions relating to the Society's regulatory process are set out in the PAO, By-Laws and the Disciplinary Committee Proceedings Rules, such provisions are, by necessity, not written in easily understandable language. The Council has therefore decided to issue to members in the near future materials explaining in a simple and easily understandable language the Society's regulatory process. It is also hoped that such materials may assist our members in explaining their position, especially on client confidentiality, to clients when dealing with the Society on regulatory matters.

Hong Kong Society of Accountants
Extraordinary General Meeting: Monday, 7 July 2003

NOTICE IS HEREBY GIVEN THAT an Extraordinary General Meeting of the Hong Kong Society of Accountants will be held at Room 401, Hong Kong Convention and Exhibition Centre, 1 Harbour Road, Wanchai, Hong Kong on Monday, 7 July 2003 at 6:00 p.m. for the purpose of considering and, if thought fit, passing the following Resolution:

“That the Council shall, through the amendment of the relevant statutory provisions in the Professional Accountants Ordinance (“PAO”) and/or the Professional Accountants By-laws (“By-laws”), introduce changes to the membership structure of the Council, Investigation Panel/Committee and Disciplinary Panel/Committee; changes to disciplinary proceedings including open disciplinary hearings, and changes to other regulatory and operational matters as broadly outlined in the Council’s Position Paper issued to members on 5 June 2003 and summarized in the Explanatory Memorandum of this Notice.”

Explanatory Memorandum

A copy of the Position Paper is enclosed for ease of reference. The following provides a summary of the legislative amendments proposed.

Part A. Composition of the Council, Investigation Panel/Committee and Disciplinary Panel/Committee

re Council

- That the number of elected members on the Council shall be increased from 12 to 14.
- That the immediate past President of the Society shall continue to hold office as a member of the Council for a term of 1 year.
- That lay members, including government officials on the Council, shall be increased from 2 to 6.
- That the additional 4 lay members shall be appointed by the Government.
- That the term of office of the lay members shall be 3 years.
- That the renewal of office of the Government appointees shall be at the discretion of the Government.

re Investigation Panel/Committee

- That there shall be two Investigation Panels from which an Investigation Committee is formed. Panel A shall comprise not less than 18 lay members appointed by the Government and Panel B shall comprise not less than 12 professional accountants appointed by the Council of whom not less than 6 shall be holders of practising certificates.
- That the term of office of the Panel A members shall be 3 years.
- That the renewal of the office of the Panel A members shall be at the discretion of the Government.
- That the membership of any Investigation Committee instigated by the Council shall be expanded from 3 to 5 persons with three members, including the Chairman, appointed from Panel A and the other two members appointed from Panel B.
- That the Government shall appoint a Panel A member to be an Investigation Committee Convenor who is delegated the power to identify and appoint the Chairman and members of an Investigation Committee to deal with a particular case when an investigation is instigated by the Council.
- That the Investigation Committee Convenor shall not be appointed to any Investigation Committee formed during his term as the Convenor, which shall be one year.

re Disciplinary Panel/Committee

- That there shall be two Disciplinary Panels from which a Disciplinary Committee is formed. Panel A shall comprise not less than 18 lay members appointed by the Government and Panel B shall comprise not less than 12 professional accountants appointed by the Council of whom not less than 6 shall be holders of practising certificates.
- That the term of office of the Panel A members shall be 3 years.
- That the renewal of the office of the Panel A members shall be at the discretion of the Government.
- That 3 of the 5 members of a Disciplinary Committee including the Chairman, shall be appointed from Panel A and the other two members appointed from Panel B.
- That the Government shall appoint a Panel A member to be a Disciplinary Committee Convenor who is delegated the power to identify and appoint the

Chairman and members of a Disciplinary Committee to deal with a particular case.

- That the Disciplinary Committee Convenor shall not be appointed to any Disciplinary Committee formed during his term as the Convenor, which shall be one year.

Part B. Disciplinary proceedings

- That the hearings of a Disciplinary Committee shall be made public except in circumstances envisaged in Article 10 of the Hong Kong Bill of Rights Ordinance.
- That the Disciplinary Committee shall be empowered to issue a consent order rather than conduct a disciplinary hearing for lesser offences.
- That a complainant aggrieved by a Council's decision not to refer his complaint to a Disciplinary Committee shall be entitled to request the Council to constitute a Disciplinary Committee to enable him to present his case directly to the Disciplinary Committee.
- That the Disciplinary Committee shall be empowered to:-
 - determine the effective date of a disciplinary order; and
 - order the withdrawal of a HKSA member's practising certificate either permanently or temporarily.
- That 'dishonorable conduct' shall be redefined to include conduct that would likely bring discredit upon the professional accountant concerned or the Society or the accountancy profession.
- That the Court of Appeal shall be able to award costs.

Part C. Other regulatory and operational matters

- That the Council shall be empowered to:-
 - cancel the practising certificate of a practising accountant who is subject to a bankruptcy order;
 - compel a member to act in accordance with a direction made by the Council in respect of registration matters, the conduct of his practice and conduct unbecoming of a certified public accountant;
 - impose penalties for failure to comply with a direction made by the Council; and
 - make continuous professional development ("CPD") a condition of membership and practising certificate renewal.

- That an Investigation Committee shall be empowered to obtain information and documents from any professional accountant other than the professional accountant who is under investigation.
- That persons engaged in the performance of any functions under Part VA of the PAO in relation to a statutory investigation shall be given immunity protection similar to that provided under section 32G of the PAO relating to persons engaged in practice reviews.
- That the Council Members, officers and staff of the HKSA or any person or Committee to whom any powers/duties of the Council are delegated shall be given immunity protection in the performance of any functions in good faith under the PAO.
- That the HKSA shall be allowed to prepare summary financial statements for distribution to members.
- That the timeframe for Council elections shall be lengthened so that members, particularly those residing or working outside Hong Kong, will have more time to exercise their voting rights.
- That the HKSA shall be able to send out ballots and serve notices by electronic means and to accept electronic voting in addition to the existing paper format.
- That the minimum number of members required to propose a resolution unrelated to the ordinary business at an annual general meeting shall be increased from 10 to 50.
- That the minimum number of members required to call a general meeting of the Society shall be increased from not less than 20 to not less than 100 or 0.5% of the total membership, whichever is the lower.

By Order of the Council

LEE Kai-fat

Registrar

Hong Kong Society of Accountants

Dated this 12 June 2003

Background

1. The proposed legislative amendments will be introduced to the Legislative Council in the form of a Private Members' Bill ("PMB").
2. The Society submitted the self-regulatory reform proposals to the Financial Services and the Treasury Bureau ("FSTB") in January 2003. In addition to the reforms to the Council, Investigation Panel/Committee and Disciplinary Panel/Committee (as summarized in Part A of the Explanatory Memorandum), the Society also suggested that the Government should, as a longer term solution, consider establishing an Independent Investigation Board ("IIB") to deal with alleged accounting, auditing and/or ethics irregularities related to companies listed on the Stock Exchange of Hong Kong. The legislative changes to effect the establishment of the proposed IIB will be the subject of separate consultation and legislation by the Government and is not included in the PMB.
3. Since the IIB proposal forms an integral part of the Society's self-regulatory reform proposals submitted to the FSTB, the Council reserves its position in regard to the need to review the legislative amendments as summarized in Part A of the Explanatory Memorandum forming part of the PMB, pending the outcome of the Government's consultation on the IIB.
4. Apart from the proposed legislative amendments outlined in the Resolution, the PMB also covers the re-branding proposals, a resolution of which was passed at the Extraordinary General Meeting of the Society held on 11 November 2002 to change the name of the Society, its membership structure, membership designations and the descriptions of practice units.
5. The Society had previously consulted members by way of a White Paper "Disciplinary Committee Proceedings Rule and other Regulatory Matters" in September 2000 on most of the proposed changes to disciplinary proceedings as summarized in Part B of the Explanatory Memorandum.