

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 2004

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A BILL

To

Amend the Professional Accountants Ordinance and for other related purposes.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Professional Accountants (Amendment) Ordinance 2004.

(2) Subject to subsection (3), this Ordinance shall come into operation 30 days after the day on which it is published in the Gazette.

(3) (a) Sections 3 (in so far as it relates to the new definitions of “appointed member”, “Disciplinary Committee Convenor”, “Disciplinary Panels”, “Investigation Committee Convenor”, “Investigation Panels” and “lay person”), 10(b), (d) and (e), 12(a) and (b), 13(d), 26 (in so far as it relates to the reference to section 35B), 33, 35, 36(c), (d) and (e), 38 (in so far as it relates to the addition of new section 35B), 43(b) (in so far as it relates to the reference to section 35B), 45 and 46(a)(ii), (iii) and (iv) (in so far as it relates to “Disciplinary Panels”) and (c); and

(b) sections 3, 15(b) and 17 (in so far as it relates to the addition of new by-law 35B) of Schedule 1,

shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Long title amended

The long title to the Professional Accountants Ordinance (Cap. 50) is amended by repealing “the Hong Kong Society of Accountants” and substituting “the Hong Kong Institute of Certified Public Accountants”.

3. Interpretation

Section 2 is amended—

- (a) by repealing the definition of “certified public accountant” and substituting—

““certified public accountant” (會計師) means a person registered as a certified public accountant by virtue of section 22;”;
- (b) by repealing the definition of “Disciplinary Panel” and substituting—

““Disciplinary Panels” (紀律小組) means the Disciplinary Panel A and Disciplinary Panel B constituted under section 33(1) and “Disciplinary Panel A” and “Disciplinary Panel B” shall be construed accordingly;”;
- (c) in the definition of “firm name”, by repealing “or public accountant” where it twice appears and substituting “(practising)”;
- (d) by repealing the definition of “Investigation Panel” and substituting—

““Investigation Panels” (調查小組) means the Investigation Panel A and Investigation Panel B constituted under section 42B(1) and “Investigation Panel A” and “Investigation Panel B” shall be construed accordingly;”;
- (e) in the definition of “practice unit”—
 - (i) by repealing paragraph (a) and substituting—

“(a) a firm of certified public accountants (practising) practising accountancy pursuant to this Ordinance;”;
 - (ii) in paragraph (b), by repealing “or public accountant” and substituting “(practising)”;
- (f) by repealing the definition of “professional accountant” and substituting—

““professional accountant” (專業會計師) means a person registered as a professional accountant before the relevant day;”;
- (g) in the definition of “professional indemnity insurance”—
 - (i) by repealing “a professional accountant” and substituting “a certified public accountant, a firm of certified public accountants (practising)”;
 - (ii) by adding “, firm” before “or practice”;
- (h) in the definition of “professional standards”, in paragraph (b), by repealing “and auditing practices,” and substituting “, auditing and assurance practices,”;

- (i) by repealing the definition of “public accountant” and substituting—
““public accountant” (註冊核數師) means a person registered as a professional accountant by virtue of the repealed section 24(2) before the relevant day;”;
- (j) by repealing the definition of “Society”;
- (k) by adding—
““appointed day” (指定日期) means the day appointed by the Secretary for Financial Services and the Treasury under section 1(3) of the Professional Accountants (Amendment) Ordinance 2004 (of 2004);
“appointed member” (委任理事) means a member of the Council appointed by the Chief Executive under section 10(2)(e);
“certified public accountant (practising)” (執業會計師) means a certified public accountant holding a practising certificate;
“Disciplinary Committee Convenor” (紀律委員會召集人) means the Disciplinary Committee Convenor appointed under section 33(1)(a);
“Institute” (公會) means the Hong Kong Institute of Certified Public Accountants (香港會計師公會) incorporated by section 3;
“Investigation Committee Convenor” (調查委員會召集人) means the Investigation Committee Convenor appointed under section 42B(1)(a);
“lay person” (業外人士) means a person who is not—
(a) a certified public accountant; or
(b) a member of an accountancy body which is a member of the International Federation of Accountants;
“relevant day” (有關日期) means the day on which the Professional Accountants (Amendment) Ordinance 2004 (of 2004) comes into operation under section 1(2) of that Ordinance;
“repealed section 24(2)” (已廢除的第 24(2)條) means section 24(2) of this Ordinance repealed by the Professional Accountants (Amendment) Ordinance 2004 (of 2004);”.

4. Part heading amended

The heading of Part II is amended by repealing “SOCIETY OF ACCOUNTANTS” and substituting “INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS”.

5. Incorporation of Institute

Section 3(b) is amended by adding “(香港會計師公會) before the relevant day, and the Hong Kong Institute of Certified Public Accountants (香港會計師公會) with effect from the relevant day” after “Accountants”.

6. Appointment of President and Vice-President

Section 4(2)(b) is amended by repealing “section 15” and substituting “section 15(1)”.

7. Objects of the Institute

Section 7 is amended—

- (a) in paragraph (a), by repealing “or public accountants” and substituting “(practising)”;
- (b) in paragraph (g), by adding “reputation,” before “integrity”;
- (c) in paragraph (h)—
 - (i) by adding “and corporate practices” after “firms”;
 - (ii) by repealing “, and corporate practices”.

8. Power of Institute to make by-laws

Section 8 is amended—

- (a) in subsection (1)—
 - (i) by adding—
 - “(la) providing for the admission of persons as affiliates of the Institute and specifying the designations for such affiliates and the initials by which such affiliates may be known;”;
 - (ii) by adding—
 - “(oa) providing for and regulating the provision and retention of information, the giving of any notice and communication, the election of any person, the voting on any matter, the signature of any person, under or pursuant to this Ordinance, by electronic means;”;

- (b) in subsection (3)—
 - (i) by adding “in person or by proxy” after “accountants present”;
 - (ii) by repealing “by post”;
 - (iii) by repealing “at his registered address”.

9. General meetings

Section 9(4) is amended by repealing “section 26, 27, 30, 34, 35, 36 or 39” and substituting “section 18B, 26, 27, 28A, 30, 32B, 32C, 32D, 32E, 32F, 34, 35, 36, 39, 42C, 42D, 42E or 42F”.

10. Establishment and composition of the Council

Section 10 is amended—

- (a) in subsection (1), by repealing “the Hong Kong Society of Accountants” and substituting “the Hong Kong Institute of Certified Public Accountants”;
- (b) in subsection (2)—
 - (i) by repealing “subsections (3) and (4)” and substituting “subsection (4)”;
 - (ii) by repealing “14 members” and substituting “21 members”;
 - (iii) in paragraph (b), by repealing “and” at the end;
 - (iv) in paragraph (c), by repealing “12 professional accountants (not being persons entitled to be registered only under section 24(2))” and substituting “14 certified public accountants (not being persons entitled to be registered as a professional accountant by virtue of the repealed section 24(2) immediately before the relevant day)”;
- (v) by repealing paragraph (c)(i) and (ii) and substituting—
 - “(i) not less than 6 shall be certified public accountants in full time practice as certified public accountants (practising);
 - (ii) not less than 6 shall be certified public accountants otherwise than in full time practice as certified public accountants (practising);”;
- (vi) by adding—
 - “(d) the immediate past President of the Institute who shall, unless he is also an elected member, hold office as a member of the Council for a period from the time when he ceased to be President until the conclusion of the annual general meeting next occurring; and

- (e) 4 lay persons appointed by the Chief Executive.”;
- (c) in subsection (2A)—
- (i) in paragraph (a), by adding “(practising)” after “certified public accountant” where it first and secondly appears;
 - (ii) in paragraph (a)(iii), by repealing from “, or which” up to and including “or public accountants” and substituting “a certified public accountant (practising) or a firm of certified public accountants (practising) or a corporate practice”;
 - (iii) in paragraph (b), by repealing from “as a certified public accountant” up to and including “or public accountants” and substituting “as a certified public accountant (practising) by reason only of the fact that he is in the employment of a certified public accountant (practising) or a firm of certified public accountants (practising) or a corporate practice”;
- (d) by repealing subsection (3) and substituting—
- “(3) An appointed member shall not be appointed for a term exceeding 2 years but shall be eligible for reappointment for a further term or terms of not exceeding 2 years each.”;
- (e) in subsection (4), by repealing “subsections (2) and (3)” and substituting “subsection (2)”.

11. Filling vacancies in Council

Section 11(1) and (2)(b) is amended by repealing “section 15” and substituting “section 15(1)”.

12. Compulsory retirement of elected members

Section 12 is amended—

- (a) in subsection (1)—
- (i) by adding “subsection (1A) and” after “Subject to”;
 - (ii) by repealing “6 elected members” and substituting “7 elected members”;
- (b) by adding—
- “(1A) Subject to section 13(2), immediately before the conclusion of the first 2 annual general meetings of the Institute after the appointed day—
- (a) in the case of the first such annual general meeting, 6 elected members who have been longest in office since their last election shall retire from office; and

- (b) in the case of the second such annual general meeting, 6 elected members who have been longest in office since their last election, and one elected member from among the remaining 8 elected members who shall be selected by lot, shall retire from office.”;
- (c) in subsection (4), by repealing “only under section 24(2)” and substituting “as a professional accountant by virtue of the repealed section 24(2) immediately before the relevant day”.

13. Vacation of office by Council members

Section 15 is amended—

- (a) by renumbering it as section 15(1);
- (b) in subsection (1)(e), by repealing “(ii), (iii) or (iv)”;
- (c) in subsection (1)(f), in the proviso, by repealing “not less than 5” and substituting “not less than 6”;
- (d) by adding—

“(2) Subsection (1)(a), (b), (c), (d) and (e) shall apply to the immediate past President of the Institute who becomes a member of the Council pursuant to section 10(2)(d) except that no vacancy is to arise upon his vacation of office in such circumstances.

(3) An appointed member shall be deemed to have vacated his office as a member of the Council if—

- (a) he becomes bankrupt or makes an arrangement or composition with his creditors; or
- (b) he ceases to be ordinarily resident in Hong Kong.”.

14. Accounts

Section 16 is amended—

- (a) by repealing subsection (4) and substituting—

“(4) A copy of the signed and audited statement of accounts, together with the auditor’s report made under subsection (3), shall be submitted for approval at the annual general meeting of the Institute next following the end of the financial year to which they relate.

(4A) A summary of financial statements shall be sent to each certified public accountant with the notice of the annual general meeting.

(4B) A certified public accountant may inspect a copy of the signed and audited statement of accounts at all reasonable times at the office of the Institute and the Institute shall provide to a certified public accountant on application a copy of the signed and audited statement of accounts without charge.”;

(b) in subsection (7)—

(i) by adding a comma after “In this section”;

(ii) by adding “; and “summary of financial statements” (財務報表撮要) means a summary, approved by the Council, of the audited statement of accounts of the Institute required to be laid before the annual general meeting of the Institute” after “made up”.

15. Council’s power to specify professional standards

Section 18A(1)(b) and (2)(b) is amended by repealing “and auditing practices,” and substituting “, auditing and assurance practices,”.

16. Section added

The following is added—

“18B. Council’s power to give directions

(1) The Council may, in connection with the discharge of any of its functions or duties or the exercise of any of its powers, give directions either generally to certified public accountants or to any one or more certified public accountants—

(a) requiring the production or provision to the Institute by a certified public accountant of any document or information in connection with the registration of any certified public accountant or firm name, or the issue of a practising certificate;

(b) requiring a certified public accountant to deliver up to the Institute any certificate of registration or practising certificate in the possession, custody or control of the certified public accountant if the registration to which the certificate relates has ceased or the practising certificate has been cancelled or ceased to be valid;

(c) requiring a certified public accountant to give to the Institute an explanation of any act or omission of the certified public accountant—

- (i) in relation to his conduct or practice as a certified public accountant; or
- (ii) which appears to the Council to be conduct unbecoming of a certified public accountant, or conduct which may affect the reputation, integrity and status of the Institute or of the accountancy profession or conduct which may fall within section 34(1)(a)(iii) to (xii).

(2) A direction given under this section shall be a direction lawfully given by the Council for the purpose of section 34(1)(a)(ix).

(3) The Council may prescribe penalties of an amount not exceeding \$50,000 to be imposed for failure by a certified public accountant to comply with a direction given to him but no penalty shall be imposed on a certified public accountant unless he admits to the failure and agrees to the penalty and any penalty so imposed may be recovered by the Institute from the certified public accountant as a civil debt.

(4) Subsections (1), (2) and (3) apply mutatis mutandis in relation to a firm of certified public accountants (practising) and to a corporate practice as they apply to a certified public accountant.”.

17. Register of certified public accountants

Section 22 is amended by adding—

“(4) Any person registered as a professional accountant immediately before the relevant day shall be deemed to be registered as a certified public accountant.”.

18. Qualifications for registration as certified public accountant

Section 24 is amended—

(a) by repealing subsection (1)(c) and substituting—

“(c) any one of the following applies to him—

- (i) as a student registered as such with the Institute, he has passed such examinations in accountancy and other subjects as may be prescribed by the Council;
- (ii) he is a member in good standing of an accountancy body with which there is in force an agreement of mutual or reciprocal recognition between the accountancy body and the Institute and he has complied with all conditions for the recognition as may be provided in the agreement;

- (iii) he is a member in good standing of an accountancy body for which members—
 - (A) the Council has granted full exemption pursuant to subsection (1A) from all the requirements of subparagraph (i); or
 - (B) the Council has granted partial exemption pursuant to subsection (1A) from some of the requirements of subparagraph (i) and he has complied with all other requirements of that subparagraph for which no exemption was granted;
- (iv) he was registered as a professional accountant at any time before the relevant day; and”;
- (b) in subsection (1A)—
 - (i) by repealing “from the requirements of subsection (1)(c)” and substituting “in whole or in part from the requirements of subsection (1)(c)(i) including exemption from the requirement of registration as a student of the Institute”;
 - (ii) by repealing proviso (a) and substituting—
 - “(a) no exemption shall be granted to such a person in respect of any examinations prescribed under subsection (1)(c)(i) unless he has satisfied the Council that he has passed such examinations of that accountancy body as the Council considers to be of equivalent standard as the examinations for which exemption is granted; and”;
- (c) by repealing subsection (2).

19. Acceptance or refusal of registration

Section 26(2)(a) is amended by repealing “registered post” and substituting “post”.

20. Removal from register of certain persons

Section 27 is amended—

- (a) in subsection (2)(a), by repealing “unless notice is sent by registered post to his registered address” and substituting “unless notice is sent to him”;
- (b) in subsection (3), by repealing “registered post” and substituting “post”.

21. Expiry of registration and renewal

Section 28(2) is amended—

- (a) in paragraph (a)—
 - (i) by adding “(or such later day as the Council may approve either generally or in respect of any application)” after “renewal”;
 - (ii) by repealing “and” at the end;
- (b) in paragraph (b), by repealing the full stop at the end and substituting “; and”;
- (c) by adding—
 - “(c) shall not be granted unless the applicant has satisfied the Council that he has complied with the requirements for the time being prescribed by the Council for continuing professional development.”.

22. Registration of firm name

Section 28A is amended—

- (a) in subsection (1), by repealing “or a public accountant” and substituting “(practising)”;
- (b) in subsection (2), by repealing “or public accountants” and substituting “(practising)”;
- (c) in subsection (3)(a), by repealing “or a public accountant” and substituting “(practising)”;
- (d) in subsection (3)(b), by repealing “or public accountants” and substituting “(practising)”;
- (e) in subsection (5)—
 - (i) by repealing “or public accountants” and substituting “(practising)”;
 - (ii) by repealing “all partners of the firm are professional accountants” and substituting “all partners of the firm are certified public accountants and at least such proportion as the Council may from time to time prescribe of its partners is or are certified public accountant or accountants (practising)”;
- (f) by adding—
 - “(6) For the avoidance of doubt, it is hereby declared that a person other than the holder of a current practising certificate shall not be entitled to sign an audit report on behalf of a firm of certified public accountants (practising).”.

23. Application for registration of a firm

Section 28B is amended by repealing “or public accountants” and substituting “(practising)”.

24. Provisions of sections 22, 23, 26, 27, 28, 39 and 41 to apply to firms and firm names

Section 28C is amended by adding “a firm and” before “a firm name”.

25. Qualification for registration of company as corporate practice

Section 28D is amended—

- (a) in subsection (2)(b)(i), by repealing “professional accountant,” and substituting “certified public accountant and at least such proportion as the Council may from time to time prescribe of its members shall be a certified public accountant or accountants (practising),”;
- (b) in subsection (2)(c)(i)—
 - (i) by repealing “either a public accountant or”;
 - (ii) by adding “(practising)” before “and the other”;
- (c) in subsection (2)(c)(i)(A)—
 - (i) by repealing “a public accountant or”;
 - (ii) by adding “(practising)” after “certified public accountant”;
- (d) in subsection (5)(a), by repealing “neither a certified public accountant nor a public accountant” and substituting “not a certified public accountant (practising)”;
- (e) in subsection (5)(c)(i)(A)—
 - (i) by repealing “either a public accountant or”;
 - (ii) by adding “(practising)” after “certified public accountant”;
- (f) in subsection (11)(b)(iii), by repealing “a client’s” and substituting “an”.

26. Provisions of sections to apply to a company

Section 28G(1) is amended by repealing “sections 26, 28, 28A(4), 35, 37, 38, 39, 40 and 41(1)” and substituting “sections 26, 28, 28A(4), 33B, 35, 35B, 36(1A), 37, 38, 39, 40 and 41(1)”.

27. Requirements to practise as certified public accountant (practising)

Section 29 is amended—

- (a) in subsection (1), by repealing “or public accountant” and substituting “(practising)”;
- (b) in subsection (3)(a)(ii), by repealing “or public accountant” and substituting “(practising)”.

28. Requirements for issue of a practising certificate

Section 29A is amended—

- (a) in subsection (1), by adding “, (1B)” after “subsections (1A)”;
- (b) in subsection (1)(a), by adding “after becoming a member of an accountancy body with which there is in force an agreement of mutual or reciprocal recognition between the accountancy body and the Institute, or” after “has,”;
- (c) in subsection (1)(a)(ii), by adding “an accountancy body with which there is in force an agreement of mutual or reciprocal recognition between the accountancy body and the Institute, or” after “under the jurisdiction of”;
- (d) in subsection (1)(b), by repealing “a body” and substituting “an accountancy body with which there is in force an agreement of mutual or reciprocal recognition between the accountancy body and the Institute, or an accountancy body”;
- (e) by adding—
 - “(1B) A practising certificate shall not be issued to an applicant if there is in force against him an order of the Disciplinary Committee under section 35(1)(db) to that effect.”.

29. Practising certificates

Section 30 is amended—

- (a) in subsection (2), by repealing “or public accountant” and substituting “(practising)”;
- (b) by repealing subsection (4) and substituting—
 - “(4) Notwithstanding subsections (1) and (2), a person registered as a professional accountant immediately before the relevant day is exempted from complying with the requirements of section 29A(1) and (2).”;
- (c) in subsection (5), by repealing “registered post” and substituting “post”;

(d) by adding—

“(7) A practising certificate shall not be issued to, and the Council may cancel the practising certificate of, a certified public accountant who is or has become bankrupt or has entered into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6).

(8) Notwithstanding subsections (2) and (4), the Council may—

(a) refuse to issue a practising certificate if the applicant has failed to satisfy the Council that he has complied with the Institute’s requirements for continuing professional development; or

(b) issue a practising certificate to an applicant subject to the condition that he shall comply with the Institute’s requirements for continuing professional development within a specified period.

(9) Where the Council is of the opinion that a certified public accountant has failed to comply with any condition imposed under subsection (8) it may, after affording the certified public accountant the opportunity to make representations, suspend or cancel the practising certificate of the certified public accountant with or without refunding the fee paid for the certificate.”.

30. Registered office

Section 31 is amended—

(a) in subsection (1), by repealing “Every professional accountant who practises as a certified public accountant or public accountant” and substituting “Every certified public accountant (practising)”;

(b) in subsection (4), by repealing “Any professional accountant who practises as a certified public accountant or public accountant” and substituting “Any certified public accountant (practising) who practises”;

(c) in subsection (5)(a)—

(i) by adding “(practising)” after “accountant”;

(ii) by repealing “a corporate practice.” and substituting—

“—

(i) a certified public accountant (practising) who practises under a firm name;

- (ii) a firm of certified public accountants (practising);
and
 - (iii) a corporate practice.”;
- (d) in subsection (5), by adding—
- “(c) In the application of subsection (2) to a certified public accountant (practising) who practises under a firm name, a firm of certified public accountants (practising) and a corporate practice, that subsection shall be construed as if the reference therein to a practising certificate were a reference to registration of the firm name, the firm and the corporate practice respectively.”.

31. Section heading amended

The heading of section 32 is amended—

- (a) by repealing “**professional accountants**” and substituting “**certified public accountants**”;
- (b) by repealing “**firms**” and substituting “**firm names**”.

32. Conduct of practice reviews

Section 32C(4) and (7) is amended by repealing “registered post” and substituting “post”.

33. Powers of the Practice Review Committee

Section 32D(7) is amended by repealing “Disciplinary Panel” and substituting “Disciplinary Panels”.

34. Section added

The following is added in Part IVA immediately after section 32H—

“32I. Change in composition of practice unit

(1) In this section, a reference to a change in composition of a practice unit means—

- (a) in relation to a firm of certified public accountants (practising), a change in the persons who comprise the partners of the firm, if at least one of the partners of the firm before the change is a partner of the firm after the change;
- (b) in relation to a corporate practice, a change in the persons who comprise the directors of the corporate practice;

- (c) in relation to a certified public accountant (practising) practising on his own account, the admission by him of any partner to his practice; and
 - (d) in relation to any practice unit, a change in the name of the practice unit, whether or not following or in consequence of an event described in paragraph (a), (b) or (c).
- (2) Where a change in composition of a practice unit occurs, a reference in this Part to a practice unit shall include the practice unit after the change in composition.
- (3) The powers under this Part shall be exercisable as regards a practice unit notwithstanding a change in composition of the practice unit.
- (4) No change in composition of a practice unit shall affect—
- (a) any right, obligation or liability acquired or incurred by or accrued to a practice unit under this Part before the change; or
 - (b) any practice review or further practice reviews of a practice unit, and any practice review or further practice reviews may be carried out and continued as regards the practice unit notwithstanding a change or further changes in composition of the practice unit.
- (5) This section applies to changes in composition of practice units whenever occurring and practice reviews whenever conducted.”.

35. Disciplinary Panels

Section 33 is amended—

- (a) by repealing subsection (1) and substituting—

“(1) There shall be 2 Disciplinary Panels—

- (a) Disciplinary Panel A shall consist of not less than 18 lay persons appointed by the Chief Executive of whom one shall be appointed by the Chief Executive to be the Disciplinary Committee Convenor and another to be his alternate;
- (b) Disciplinary Panel B shall consist of not less than 12 certified public accountants appointed by the Council of whom not less than 6 shall be holders of practising certificates.

(1A) The Disciplinary Committee Convenor shall not be appointed for a term exceeding 1 year but shall be eligible for reappointment for a further term or terms of not exceeding 1 year each.

- (1B) The alternate of the Disciplinary Committee Convenor shall act in place of the Disciplinary Committee Convenor if the Disciplinary Committee Convenor is precluded by illness, absence from Hong Kong or any other cause from performing his functions as such.”;
- (b) in subsection (2), by repealing “the Disciplinary Panel” wherever it appears and substituting “any of the Disciplinary Panels”;
- (c) in subsection (3)—
- (i) in paragraph (a), by repealing from “the Disciplinary Panel, the Council” up to and including “such committee” and substituting “the Disciplinary Panels, the Council shall constitute a Disciplinary Committee to deal with the complaint by directing the Disciplinary Committee Convenor to appoint the chairman and other members of the Disciplinary Committee, and the Disciplinary Committee Convenor shall act in accordance with such direction”;
- (ii) in paragraph (b), by repealing from “the person” up to and including “by its chairman.” and substituting—
“the following 5 members—
- (i) a person appointed by the Disciplinary Committee Convenor from Disciplinary Panel A who shall be the chairman of the Disciplinary Committee;
- (ii) 2 persons appointed by the Disciplinary Committee Convenor from Disciplinary Panel A; and
- (iii) 2 persons appointed by the Disciplinary Committee Convenor from Disciplinary Panel B of whom one shall be the holder of a practising certificate.”;
- (iii) by repealing paragraph (c) and substituting—
“(c) The Disciplinary Committee Convenor shall not be appointed as a member of a Disciplinary Committee.”.

36. Disciplinary provisions

Section 34 is amended—

- (a) in subsection (1)(a)(x), by repealing “as a professional accountant”;
- (b) in subsection (1)(b)(v)—
- (i) by adding “conduct” after “dishonourable”;
- (ii) by repealing “who is a professional accountant of good repute professionally”;
- (c) in subsection (1), by repealing “Disciplinary Panel” and substituting “Disciplinary Panels”;

- (d) by adding immediately after subsection (1)—
“(1AAA) If the Council decides not to refer the complaint to the Disciplinary Panels, the complainant who is aggrieved by the Council’s decision may request the Council to refer the complaint to the Disciplinary Panels, whereupon the Council shall, unless it is of the opinion that no prima facie case has been shown for the complaint, or that the complaint is frivolous or vexatious, refer the complaint to the Disciplinary Panels.”;
- (e) in subsection (1A), by repealing “Disciplinary Panel” and substituting “Disciplinary Panels”;
- (f) in subsection (2)—
(i) by repealing “subsection (1)(a)(x)” and substituting “subsection (1)(a)(x) and (b)(v)”;
- (ii) by repealing “which would be reasonably regarded as dishonourable by accountants of good repute and competency” and substituting “, whether or not in the course of carrying out professional work or as a certified public accountant, which would reasonably be regarded as bringing or likely to bring discredit upon the certified public accountant himself, the Institute or the accountancy profession”.

37. Disciplinary powers of Disciplinary Committee

Section 35(1) is amended—

- (a) by adding—
“(da) an order that the practising certificate issued to the certified public accountant be cancelled;
(db) an order that a practising certificate shall not be issued to the certified public accountant either permanently or for such period as the Disciplinary Committee may think fit,”;
- (b) by repealing paragraph (e);
- (c) by repealing from “and may in any case” up to and including “a civil debt.” and substituting—
“and the Disciplinary Committee may in any case—
(f) provide for an order to take effect on such date as the Disciplinary Committee thinks fit;
(g) provide for an order to take effect only upon the happening or non-happening of such event within such period as may be specified by the Disciplinary Committee;

- (h) make such order as the Disciplinary Committee thinks fit with regard to the payment of costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of any complainant or of the certified public accountant, and any costs and expenses or penalty ordered to be paid may be recovered as a civil debt.”.

38. Sections added

The following are added—

“35A. Payment of fees to members of Disciplinary Committee

The Institute may pay fees at such rates as the Council may from time to time fix and such expenses as the Council may deem fit to any members of a Disciplinary Committee for the performance by them of their duties or for any work done by them, and such fees and expenses shall for the purpose of section 35(1) form part of the costs and expenses of the Institute of and incidental to the disciplinary proceedings.

35B. Consent order

(1) Where a complaint that section 34(1)(a)(vi), (viii), (ix) or (x) applies to a certified public accountant is referred to the Disciplinary Committee and the Disciplinary Committee, without hearing either the complainant or the certified public accountant, is of the view that the complaint is of such a nature that if the complaint is proved, the appropriate order or orders to be made should fall within one or more of the following orders under section 35—

- (a) an order that the certified public accountant be reprimanded;
- (b) an order that the certified public accountant pay a penalty not exceeding \$50,000 to the Institute;
- (c) an order that the certified public accountant pay the costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of the complainant,

the Disciplinary Committee may give notice to the complainant and the certified public accountant.

(2) A notice given by the Disciplinary Committee under subsection (1) shall state—

- (a) the order or orders, being order or orders no more than those referred to in subsection (1), which the Disciplinary Committee proposes to make if the certified public accountant admits to the complaint; and
- (b) the time (being not earlier than 14 days from the date when the notice was given, or such further time as the Disciplinary Committee may allow) within which each of the complainant and the certified public accountant is required to inform the Disciplinary Committee as to whether he will consent to the proposed order or orders.

(3) If the complainant and the certified public accountant consent to the proposed order or orders, the Disciplinary Committee shall make an order or orders in terms of the proposed order or orders and such order and orders shall be deemed to be an order or orders made under section 35, save that sections 38(2) and 41(1)(b)(iii) shall not apply to such order or orders.

(4) If the complainant or the certified public accountant informs the Disciplinary Committee that he does not consent to the proposed order or orders, or if the Disciplinary Committee considers that the consent of either the complainant or the certified public accountant is not forthcoming notwithstanding the notice under subsection (2)(b), the Disciplinary Committee shall inform the Council and the following shall apply—

- (a) the Disciplinary Committee shall be dissolved;
- (b) the Council shall constitute a new Disciplinary Committee to deal with the complaint with which the dissolved committee was concerned by directing the Disciplinary Committee Convenor to appoint the chairman and other members of the new Disciplinary Committee;
- (c) a person who was a member of the dissolved committee shall not be eligible for membership of the new Disciplinary Committee; and
- (d) the new Disciplinary Committee shall deal with the complaint afresh without regard to this section and, accordingly, it shall not have any regard to any proceedings of the dissolved committee, including the proposed order or orders of the dissolved committee or any failure or refusal of the complainant or the certified public accountant to consent to the proposed order or orders.”.

39. Powers of Disciplinary Committee with regard to obtaining evidence and the conduct of proceedings

Section 36 is amended—

- (a) by repealing subsection (1)(c);
- (b) by adding—

“(1A) Every hearing of the Disciplinary Committee shall be held in public unless the Disciplinary Committee—

(a) on its own motion; or

(b) on the application of—

(i) the complainant; or

(ii) the certified public accountant against whom the complaint is made,

determines that in the interests of justice a hearing or any part thereof shall not be held in public in which case it may hold the hearing or the part thereof (as the case may be) in private.”.

40. Conduct of proceedings and representation

Section 37 is amended—

- (a) in subsection (1)(a), by adding “, or, with the approval of the Disciplinary Committee, some other person appointed by the complainant to represent him” after “or his solicitor or counsel”;
- (b) in subsection (1)(c), by adding “or some other person appointed by the Investigation Committee to represent it,” after “or counsel of such member,”;
- (c) in subsection (2), by adding “, or, with the approval of the Disciplinary Committee, by some other person appointed by the certified public accountant to represent him” after “represented by counsel or a solicitor”.

41. Provisions relating to orders of the Disciplinary Committee

Section 38 is amended—

- (a) in subsection (1)—
 - (i) by repealing “paragraph (a), (b), (c) or (d) of”;
 - (ii) by repealing “registered post” and substituting “post”;
- (b) in subsection (2), by repealing “in the register by virtue of an order made under subsection (1)(b), (c) or (d)” and substituting

“or an order in respect of practising certificate in the register by virtue of an order made under subsection (1)(b), (c), (d), (da) or (db)”.

42. Appeals

Section 41 is amended—

- (a) in subsection (1)(b)(iii), by repealing “paragraph (a), (b), (c) or (d) of”;
- (b) in subsection (3), by repealing from “The practice and procedure” up to and including “(Cap. 4)” and substituting “In any such appeal the Court of Appeal may exercise such powers as are vested in it by the High Court Ordinance (Cap. 4) and the practice and procedure shall be in accordance with rules of court made under that Ordinance”;
- (c) in subsection (3), in paragraph (d) of the proviso, by repealing “paragraph (a), (b), (c) or (d) of”.

43. Application of disciplinary provisions to firms

Section 41A is amended—

- (a) by adding “33B,” after “Sections”;
- (b) by repealing “34(1)(b)(iii) and (v), 35” and substituting “34(1)(b)(iii), 35, 35B, 36(1A)”;
- (c) by repealing “mutantis” and substituting “mutatis”;
- (d) by repealing “or public accountants” where it twice appears and substituting “(practising)”;
- (e) by adding “or, as the case may be, to a corporate practice” before “and so that in any proceedings against”.

44. Section added

The following is added in Part V immediately after section 41A—

“41B. Immunity

(1) The chairman or a member of the Disciplinary Committee performing any function under or pursuant to this Part shall have the same privileges and immunities a judge of the Court of First Instance has in relation to civil proceedings in that court.

(2) A party to any hearing or any witness, counsel, solicitor or person representing a party appearing before a hearing shall have the same privileges or immunities such a party, witness, counsel, solicitor or person representing a party respectively would have had in relation to civil proceedings in the Court of First Instance.”.

45. Investigation Panels

Section 42B is amended—

(a) by repealing subsection (1) and substituting—

“(1) There shall be 2 Investigation Panels—

- (a) Investigation Panel A shall consist of not less than 18 lay persons appointed by the Chief Executive of whom one shall be appointed by the Chief Executive to be the Investigation Committee Convenor and another to be his alternate;
- (b) Investigation Panel B shall consist of not less than 12 certified public accountants appointed by the Council of whom not less than 6 shall be holders of practising certificates.

(1A) The Investigation Committee Convenor shall not be appointed for a term exceeding 1 year but shall be eligible for reappointment for a further term or terms of not exceeding 1 year each.

(1B) The alternate of the Investigation Committee Convenor shall act in place of the Investigation Committee Convenor if the Investigation Committee Convenor is precluded by illness, absence from Hong Kong or any other cause from performing his functions as such.”;

(b) in subsection (2), by repealing “the Investigation Panel” wherever it appears and substituting “any of the Investigation Panels”.

46. Appointment of Investigation Committee

Section 42C is amended—

(a) in subsection (1)—

- (i) by adding “the firm of certified public accountants (practising) or corporate practice,” after “accountant,”;
- (ii) by adding “refer the matter to the Disciplinary Panels and” after “the Council may in its discretion”;

- (iii) by repealing “and refer the matter to it,”;
- (iv) by repealing “it under” and substituting “the Disciplinary Panels under”;
- (b) in subsection (2)(a)—
 - (i) in subparagraph (i), by repealing “section 34(1)(a)(iii)” and substituting “section 34(1)(a)(iii), (xi) or (xii)”;
 - (ii) in subparagraph (ii), by repealing “or public accountants,” and substituting “(practising);”;
 - (iii) by adding—
 - “(iii) section 34(1)(a) or (b), as applied by section 34(1AA), applies to a corporate practice,”;
 - (iv) by repealing “such a complaint” and substituting “a complaint”;
 - (v) by adding “or corporate practice” after “accountant or firm”;
- (c) by repealing subsection (2)(b)(i), (ii) and (iii) and substituting—
 - “(i) the Council shall direct the Investigation Committee Convenor to appoint the chairman and other members of the Investigation Committee and the Investigation Committee Convenor shall act in accordance with the direction;
 - (ii) the Investigation Committee shall consist of the following 5 members—
 - (A) a person appointed by the Investigation Committee Convenor from Investigation Panel A who shall be the chairman of the Investigation Committee;
 - (B) 2 persons appointed by the Investigation Committee Convenor from Investigation Panel A; and
 - (C) 2 persons appointed by the Investigation Committee Convenor from Investigation Panel B of whom one shall be the holder of a practising certificate;
 - (iii) the Investigation Committee Convenor shall not be appointed as a member of an Investigation Committee.”.

47. Powers of Investigation Committee as regards its proceedings

Section 42D(2) is repealed and the following substituted—

- “(2) Subsection (1)(a) applies—
- (a) to the certified public accountant, firm of certified public accountants (practising) or corporate practice to whom the Investigation Committee’s proceedings relate and—
 - (i) where the proceedings relate to a certified public accountant, also to that accountant’s employer and former employer (if any) and to any employee or former employee of such accountant; and
 - (ii) where the proceedings relate to a firm of certified public accountants (practising) or corporate practice, also to any employee or former employee of such firm or corporate practice; and
 - (b) to any certified public accountant, firm of certified public accountants (practising) or corporate practice other than those specified in paragraph (a), and any employee or former employee of such accountant, firm or corporate practice who is a certified public accountant or a student registered with the Institute.”.

48. Section added

The following is added in Part VA immediately after section 42G—

“42H. Immunity

No liability shall be incurred by any person in respect of anything done or omitted to be done by him in good faith in the performance or exercise or purported performance or exercise of any function or power under this Part.”.

49. Offences and penalties

Section 42 is amended—

- (a) in subsection (1)(e), by repealing “or public accountant” and substituting “(practising)”;
- (b) in subsection (1)(f), by repealing “or public accountant” and substituting “(practising)”;
- (c) in subsection (1)(g), by repealing “or public accountant” and substituting “(practising)”;
- (d) by repealing subsection (1)(h) and substituting—
 - “(h) not being a certified public accountant—
 - (i) knowingly permits the use of or uses in connection with his business, trade, calling or profession the

- description “professional accountant”, “certified public accountant” or “certified accountant”, or the characters “專業會計師”, “會計師” or “註冊會計師”, or any written words, initials or abbreviations of words intended to cause, or which may reasonably cause, any person to believe that the person using the same is a certified public accountant; or
- (ii) uses after or in conjunction with his name the initials “CPA”;
- (e) in subsection (1)(*ha*)—
- (i) in subparagraph (i), by repealing “persons who are either a public accountant or a certified public accountant” and substituting “a person who is a certified public accountant (practising)”;
- (ii) in subparagraph (ii), by repealing “or a public accountant” and substituting “(practising)”;
- (iii) in subparagraph (iii), by repealing ““certified public accountant” or “public accountant” or uses after or otherwise in conjunction with its name the initials “C.P.A.” or “P.A.”” and substituting ““certified public accountant (practising)” or “public accountant” or uses after or otherwise in conjunction with its name the initials “CPA (practising)” or “PA””;
- (f) in subsection (1)(*i*)—
- (i) by adding “or not being a practice unit the firm name of which is registered under section 28A” after “holding a practising certificate”;
- (ii) in subparagraph (i), by repealing “or public accountant” and substituting “(practising)”;
- (iii) in subparagraph (ii), by repealing ““certified public accountant” or “public accountant” or uses after or in conjunction with his name the initials “C.P.A.” or “P.A.”” and substituting ““certified public accountant (practising)” or “public accountant” or uses after or in conjunction with his name the initials “CPA (practising)” or “PA””;
- (g) in subsection (1), by adding—
- “(ia) being a certified public accountant who does not hold a practising certificate, carries on a business, trade or profession in a name or style—
- (i) otherwise than his own name without any addition as registered under section 22(2); and

- (ii) which includes the description “certified public accountant”, the initials “CPA” or the characters “會計師”;
- (h) in subsection (1)(l), by repealing “a professional accountant, a firm of certified public accountants or public accountants” and substituting “a certified public accountant (practising), a firm of certified public accountants (practising)”;
- (i) in subsection (1)(ii), by repealing “or public accountants” and substituting “(practising)”;
- (j) in subsection (2), by repealing “or public accountant” and substituting “(practising)”.

50. Construction of references to auditors

Section 43 is repealed.

51. Fees and expenses

Section 45 is amended by repealing “or public accountant” and substituting “(practising)”.

52. Power of Council to make rules

Section 51 is amended—

- (a) in subsection (1)(e)—
 - (i) in subparagraph (ii), by adding “(practising)” after “certified public accountants”;
 - (ii) by repealing subparagraph (iii);
- (b) by adding—
 - “(4) For the avoidance of doubt, it is hereby declared that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply to rules made under this section.”.

53. Sections added

The followings are added—

“52. Council may delegate

(1) The Council may delegate to any person or to a committee of the Council any of the powers or duties granted to or imposed on the Council under this Ordinance, other than the power to make rules under section 51.

(2) Where the Council makes a delegation under subsection (1) it may at the same time authorize the person or committee to whom the delegation is made to sub-delegate the power delegated and such authorization may contain restrictions or conditions as regards the exercise of the power to sub-delegate under the authorization.

53. Immunity for the members of the Council, etc.

No personal liability shall be incurred by any of the members of the Council, the Registrar or any officer or employee of the Institute or any person to whom any powers or duties of the Council is delegated in respect of any act done or any omission made by him in good faith in the performance or exercise or purported performance or exercise of any function or power under this Ordinance.”.

54. Consequential amendments to the Ordinance

(1) The Ordinance is amended in the following provisions by repealing “professional accountant” wherever it appears and substituting “certified public accountant”—

- (a) section 2 (the definition of “registered address”);
- (b) section 8(3);
- (c) section 9(4);
- (d) section 10(2A);
- (e) section 11(1) and (2);
- (f) section 13(1)(c) and (2);
- (g) section 14;
- (h) section 15(1)(f);
- (i) section 18A(1);
- (j) section 24(1) (other than subsection (1)(c)(iv));
- (k) section 25(1);
- (l) section 27(1)(a), (2), (3), (4), (5) and (6);
- (m) section 28(1) and (2);
- (n) section 28C;
- (o) section 28E(2);
- (p) section 28G(1) and (2);
- (q) section 29(1);
- (r) section 29A(1);
- (s) section 30(1), (2) and (6);
- (t) section 31(5)(a);
- (u) section 32(3)(a);
- (v) section 32B(1)(d);

- (w) section 32C(5)(a);
- (x) section 32D(5) and (7);
- (y) section 32E(2);
- (z) section 32F(3);
- (za) section 33B(2) and (3)(a)(i);
- (zb) section 34(1)(a) and (b)(v), (1A) and (2);
- (zc) section 35(1)(a), (b), (c) and (d);
- (zd) section 37(2);
- (ze) section 38(2);
- (zf) section 40;
- (zg) section 41(1)(b);
- (zh) section 41A;
- (zi) section 42C(1) and (2)(a);
- (zj) section 42(1)(f), (g) and (i) and (2);
- (zk) section 45;
- (zl) section 48;
- (zm) section 49(1) and (3);
- (zn) section 51(1)(e)(i).

(2) The Ordinance is amended in the following provisions by repealing “professional accountants” wherever it appears and substituting “certified public accountants”—

- (a) section 2 (the definition of “register”);
- (b) section 3;
- (c) section 7(a) and (h);
- (d) section 8(1)(l) and (3);
- (e) section 10(4);
- (f) section 13(1);
- (g) section 16(3);
- (h) section 18(2);
- (i) section 32(1)(a) and (3)(a);
- (j) section 32A(2).

(3) Section 49(2) is amended by repealing “professional accountant’s” and substituting “certified public accountant’s”.

(4) The headings of Parts IV and VA are amended by repealing “PROFESSIONAL ACCOUNTANTS” and substituting “CERTIFIED PUBLIC ACCOUNTANTS”.

(5) The headings of sections 14, 39 and 40 are amended by repealing “**professional accountant**” and substituting “**certified public accountant**”.

(6) The heading of section 13 is amended by repealing “**professional accountants**” and substituting “**certified public accountants**”.

(7) The Ordinance is amended in the following provisions by repealing “Society” wherever it appears and substituting “Institute”—

- (a) section 2 (the definition of “Council”);
- (b) section 2 (the definition of “President”);
- (c) section 2 (the definition of “Vice-President”);
- (d) section 4(1);
- (e) section 5;
- (f) section 6(1) and (2);
- (g) section 7;
- (h) section 8(1), (2) and (3);
- (i) section 9(1), (2), (3) and (4);
- (j) section 10(2)(c);
- (k) section 12(1);
- (l) section 13(1);
- (m) section 16(1), (2), (5), (6) and (7);
- (n) section 17(1) and (2);
- (o) section 18(1)(a), (c), (e), (f), (i), (j), (k) and (l) and (2);
- (p) section 19(1), (2) and (3);
- (q) section 20;
- (r) section 21(2);
- (s) section 22(3);
- (t) section 24(1A);
- (u) section 27(2)(b);
- (v) section 32B(2);
- (w) section 32E(1)(d);
- (x) section 35(1)(c);
- (y) section 42D(1)(d);
- (z) section 42F;
- (za) section 48;
- (zb) section 49(1) and (3)(c).

(8) The heading of Part III is amended by repealing “SOCIETY” and substituting “INSTITUTE”.

(9) The headings of sections 5 and 49 are amended by repealing “Society” and substituting “Institute”.

55. Amendments to the Professional Accountants By-laws

The provisions of the Professional Accountants By-laws (Cap. 50 sub. leg. A) are amended as specified in Schedule 1.

56. Consequential amendments to other Ordinances

The enactments specified in Schedule 2 are amended as set out in Schedule 2.

SCHEDULE 1

[s. 55]

AMENDMENTS TO THE PROFESSIONAL ACCOUNTANTS BY-LAWS

1. Nominations of members of Council

By-law 2 of the Professional Accountants By-laws (Cap. 50 sub. leg. A) is amended—

- (a) in paragraph (3), by repealing “18 days” and substituting “24 days”;
- (b) in paragraph (5)—
 - (i) by repealing “14 days” and substituting “17 days”;
 - (ii) by repealing “to whom notice has been given of the annual general meeting under by-law 14.”.

2. Ballot for elected members of Council

By-law 3 is amended—

- (a) in paragraph (1)—
 - (i) by repealing “10 days” and substituting “17 days”;
 - (ii) by repealing “under by-law 14”;
- (b) by adding—
 - “(7) The Council may permit ballot papers to be sent and votes to be cast by electronic communication subject to such terms and conditions as the Council may determine.
 - (8) For the purpose of this by-law—
 - (a) “ballot paper” (選票) shall be deemed to include any electronic form of the same;
 - (b) “electronic address” (電子地址) means any number or address used for the purposes of electronic communication;
 - (c) “electronic communication” (電子通訊) means a communication sent by electronic transmission in any form through any medium; and
 - (d) a ballot paper shall be deemed to have been sent or delivered on the day on which it is transmitted from the server or other device used by the Registrar or his agent; in proving such service or delivery by the Registrar it shall be conclusive to prove that the electronic address used for the electronic communication was the last known electronic address supplied by the certified public accountant for such purpose unless the Registrar or his agent is aware that there has been a failure of delivery to such address, in which case the ballot paper shall be sent to the certified public accountant by post or such other means at the absolute discretion of the Registrar; completed ballot papers shall be considered to be returned to the Registrar upon actual receipt by the Registrar at the electronic address designated by him for such purpose.”.

3. Quorum of Council

By-law 5 is amended by repealing “7 members” and substituting “11 members”.

4. Chairman of meetings of Council

By-law 7(1A) is repealed and the following substituted—

- “(1A) (a) In this paragraph, “longest serving Vice-President” (年資最長的副會長) means, as between the Vice-Presidents—
- (i) the Vice-President who has in aggregate served the longest period as a Vice-President; and
 - (ii) if both Vice-Presidents have in aggregate served the same period as Vice-Presidents, the Vice-President who has in aggregate served the longest period as a member of the Council.
- (b) In the absence of the President—
- (i) the longest serving Vice-President who is present shall be chairman at a meeting of the Council;
 - (ii) if the longest serving Vice-President is not present, the other Vice-President who is present shall be chairman of the meeting; and
 - (iii) if both Vice-Presidents are present but between them neither is the longest serving Vice-President, the members of the Council present shall elect one of the Vice-Presidents to be chairman of the meeting.”.

5. General meetings of Institute

By-law 13 is amended—

- (a) in paragraph (2), by repealing “20 professional accountants,” and substituting “whichever is the lower of 100 certified public accountants and 0.5% (in case of a fraction rounded up to the next whole number) of the total number of certified public accountants,”;
- (b) in paragraph (3), by repealing “21 days” and substituting “28 days”.

6. Resolution

By-law 15 is amended—

- (a) in paragraph (1), by repealing “14 days” and substituting “21 days”;
- (b) in paragraph (2)(c), by repealing “8 other professional accountants” and substituting “48 other certified public accountants”;
- (c) in paragraph (4), by repealing “10 days” and substituting “17 days”.

7. Procedure at meetings of Institute

By-law 18(8) is amended by repealing “Subject to section 8(3) of the Ordinance, the” and substituting “The”.

8. Appointment and functions of registration committee

By-law 20(1) is amended by adding “, 28A(1) and (2), 28B” after “sections 25”.

9. CPA and Fellows

By-law 22 is amended—

- (a) in paragraph (1)—
 - (i) in subparagraph (a), by repealing “an Associate of the Hong Kong Society of Accountants” and substituting “a Certified Public Accountant (會計師)”;
 - (ii) in subparagraph (b), by repealing ““A.H.K.S.A.”” and substituting ““CPA””;
 - (iii) in subparagraph (c), by repealing “an Associate of the Society” and substituting “a certified public accountant”;
- (b) in paragraph (2)—

- (i) in subparagraph (a), by repealing “Fellow of the Hong Kong Society of Accountants” and substituting “Fellow of the Hong Kong Institute of Certified Public Accountants (資深會計師)”;
- (ii) in subparagraph (b), by repealing ““F.H.K.S.A.”” and substituting ““FCPA””;
- (c) in paragraph (3)—
 - (i) in subparagraph (a), by repealing “an Associate of the Society” and substituting “a certified public accountant”;
 - (ii) by repealing subparagraph (b) and substituting—
 - “(b) has, in the opinion of the Council, a standing equivalent to that of a professional accountant before the relevant day or of a certified public accountant for not less than 7 years, by reason of his standing as a member of—
 - (i) another accountancy body with which there is in force an agreement of mutual or reciprocal recognition between the accountancy body and the Institute; or
 - (ii) another accountancy body accepted by the Council by resolution approved by two-thirds of its members as being of a standard similar to that of the Institute.”.

10. Part VA added

The following is added—

“PART VA
AFFILIATES

22A. Affiliates

- (1) The Institute may on application to the Council in such form as it may specify and on payment of the fee fixed by the Council admit a person in good standing as a member of an accountancy body which is a member of the International Federation of Accountants as an international affiliate of the Institute (“affiliate”).
- (2) The Council may—
 - (a) require an affiliate to pay such admission and periodic fee to the Institute as the Council may determine;
 - (b) revoke the admission of an affiliate.
- (3) An affiliate shall be designated as an International Affiliate of the Hong Kong Institute of Certified Public Accountants.”.

11. By-law substituted

By-law 25 is repealed and the following substituted—

“25. Certified public accountants

- (1) A certified public accountant holding a practising certificate may describe himself as a “Certified Public Accountant (會計師)” or a “Certified Public Accountant (Practising) (執業會計師)” and use the initials “CPA” or “CPA (practising)”.
- (2) A firm registered under sections 28B and 28C of the Ordinance or a corporate practice registered under sections 28D(4) and 28E of the Ordinance may describe itself as “Certified Public Accountants” or “Certified Public Accountants (Practising)” or in Chinese “會計師事務所” or “會計師行”.

12. Certified public accountants not to practise with or employ certain persons

By-law 28(c) is amended by repealing “or public accountant,” and substituting “(practising),”.

13. Restrictions on name in which practice may be carried on

By-law 29 is amended—

- (a) by repealing “or public accountant” and substituting “(practising)”;
- (b) in paragraph (b), by repealing “or public accountants,” and substituting “(practising),”;
- (c) in paragraph (d), by repealing “section 28B” and substituting “section 28A”;
- (d) in paragraph (e), by repealing “section 28E” and substituting “sections 28D(4) and 28E”.

14. By-law substituted

By-law 29A is repealed and the following substituted—

“29A. Death of certified public accountant

Without prejudice to the powers of the Council under by-laws 28 and 29 the Council may permit a certified public accountant holding a practising certificate to practise as a certified public accountant (practising) in the name or style in which a certified public accountant (practising) was lawfully practising immediately prior to his death and as an employee of the personal representative of the deceased certified public accountant (practising), for such period and subject to such conditions as the Council may impose.”.

15. Disciplinary provisions

By-law 34 is amended—

- (a) in paragraph (1), by repealing “refer the complaint to the Disciplinary Committee” and substituting “constitute a Disciplinary Committee to deal with the complaint”;
- (b) by adding—
 - “(1A) If the Council decides not to constitute a Disciplinary Committee to deal with the complaint, the complainant who is aggrieved by the Council’s decision may request the Council to constitute a Disciplinary Committee to deal with the complaint, whereupon the Council shall, unless it is of the opinion that no prima facie case has been shown for the complaint, or that the complaint is frivolous or vexatious, constitute a Disciplinary Committee to deal with the complaint.”;
- (c) by repealing paragraph (2) and substituting—
 - “(2) Where the Registrar has reason to believe that paragraph (1) applies to a registered student, he shall submit the facts to the Council which may, in its discretion, constitute a Disciplinary Committee to deal with the complaint.”;
- (d) by adding—
 - “(3) Every hearing of the Disciplinary Committee shall be held in public unless the Disciplinary Committee—
 - (a) on its own motion; or
 - (b) on the application of—
 - (i) the complainant; or
 - (ii) the registered student against whom the complaint is made,determines that in the interests of justice a hearing or any part thereof shall not be held in public in which case it may hold the hearing or the part thereof (as the case may be) in private.”.

16. Powers of Disciplinary Committee

By-law 35 is amended—

- (a) in paragraph (1)—
 - (i) by repealing “referred to it”;
 - (ii) by repealing the full stop at the end and substituting—

“
and may in an order under subparagraph (i) or (ii) provide for the order to take effect on or from such date as the Disciplinary Committee thinks fit and may in any case make such order as the Disciplinary Committee thinks fit with regard to the payment of costs and expenses of and incidental to the proceedings, whether of the Institute (including the fees and expenses of the Disciplinary Committee) or of any complainant or of the registered student, and any costs and expenses ordered to be paid may be recovered as a civil debt.”;

(b) by adding—

“(1A) In addition, the Disciplinary Committee may in any case provide for an order to take effect only upon the happening or non-happening of such event within such period as may be specified by the Disciplinary Committee.”.

17. By-laws added

The following are added—

“35A. Payment of fees to members of Disciplinary Committee

The Institute may pay fees at such rates as the Council may from time to time fix and such expenses as the Council may deem fit to any members of a Disciplinary Committee for the performance by them of their duties or for any work done by them, and such fees and expenses shall for the purpose of by-law 35(1) form part of the costs and expenses of the Institute of and incidental to the disciplinary proceedings.

35B. Consent order

(1) Where a complaint that by-law 34(1)(c) or (e) applies to a registered student is referred to the Disciplinary Committee and the Disciplinary Committee, without hearing either the complainant or the registered student, is of the view that the complaint is of such a nature that if the complaint is proved, the appropriate order or orders to be made should fall within one or more of the following orders under by-law 35—

(a) an order that the registered student be reprimanded;

(b) an order that the registered student be admonished;

(c) an order that the registered student pay the costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of the complainant,

the Disciplinary Committee may give notice to the complainant and the registered student.

(2) A notice given by the Disciplinary Committee under paragraph (1) shall state—

(a) the order or orders, being order or orders no more than those referred to in paragraph (1), which the Disciplinary Committee proposes to make if the registered student admits to the complaint; and

(b) the time (being not earlier than 14 days from the date when the notice was given, or such further time as the Disciplinary Committee may allow) within which each of the complainant and the registered student is required to inform the Disciplinary Committee as to whether he will consent to the proposed order or orders.

(3) If the complainant and the registered student consent to the proposed order or orders, the Disciplinary Committee shall make an order or orders in terms of the proposed order or orders and such order and orders shall be deemed to be an order or orders made under by-law 35, save that by-law 36(1) shall not apply to such order or orders.

(4) If the complainant or the registered student informs the Disciplinary Committee that he does not consent to the proposed order or orders, or if the Disciplinary Committee considers that the consent of either the complainant or the registered student is not forthcoming notwithstanding the notice under paragraph (2)(b), the Disciplinary Committee shall inform the Council and the following shall apply—

(a) the Disciplinary Committee shall be dissolved;

(b) the Council shall constitute a new Disciplinary Committee to deal with the complaint with which the dissolved committee was concerned by directing the

Disciplinary Committee Convenor to appoint the chairman and other members of the new Disciplinary Committee;

- (c) a person who was a member of the dissolved committee shall not be eligible for membership of the new Disciplinary Committee; and
- (d) the new Disciplinary Committee shall deal with the complaint afresh without regard to this by-law and, accordingly, it shall not have any regard to any proceedings of the dissolved committee, including the proposed order or orders of the dissolved committee or any failure or refusal of the complainant or the registered student to consent to the proposed order or orders.”.

18. By-law added

The following is added in Part VIII immediately after by-law 36—

“36A. Conduct of proceedings and representation

At the hearing of a complaint, a registered student whose conduct is the subject of such proceedings shall be entitled to be represented by counsel or a solicitor, or, with the approval of the Disciplinary Committee, by some other person appointed by the registered student to represent him throughout the proceedings.”.

19. Restriction on taking examinations

By-law 38 is amended—

- (a) by repealing paragraph (1)(b) and substituting—
 - “(b) is a person required or permitted to sit an examination under or pursuant to—
 - (i) any of the provisions of the Ordinance; or
 - (ii) any agreement of mutual or reciprocal recognition between another accountancy body and the Institute.”;
- (b) in paragraph (4), by adding “or HKICPA” after “HKSA”;
- (c) in paragraph (5), by repealing “who is required to sit an examination under section 29A(3) of the Ordinance”.

20. Qualification etc.

By-law 43(3) is amended by repealing “the Society at a general meeting” and substituting “the Council”.

21. Retirement of auditor

By-law 44 is amended by repealing “14 days” and substituting “21 days”.

22. Nomination of auditors

By-law 45(4) is amended by repealing “10 days” and substituting “17 days”.

23. Consequential amendments to the by-laws

(1) The by-laws are amended in the following provisions by repealing “professional accountant” wherever it appears and substituting “certified public accountant”—

- (a) by-law 2(1A), (1), (2)(b) and (5);
- (b) by-law 3(1) and (3);
- (c) by-law 14;
- (d) by-law 15(1), (2)(a) and (b) and (4);
- (e) by-law 17(2)(b);

- (f) by-law 18(2) and (8);
- (g) by-law 22(1), (2) and (3) (other than paragraph (3)(b));
- (h) by-law 26(2)(a);
- (i) by-law 28;
- (j) by-law 29;
- (k) by-law 34(1)(d);
- (l) by-law 41(1);
- (m) by-law 43(1).

(2) The by-laws are amended in the following provisions by repealing “professional accountants” wherever it appears and substituting “certified public accountants”—

- (a) by-law 2(1);
- (b) by-law 15(4)(b);
- (c) by-law 16(1) and (3);
- (d) by-law 17(1A) and (2);
- (e) by-law 18(3)(a) and (b) and (6);
- (f) by-law 20(1) and (1A);
- (g) by-law 26(1) and (1A);
- (h) by-law 45(2) and (4).

(3) The heading of Part V is amended by repealing “PROFESSIONAL ACCOUNTANTS” and substituting “CERTIFIED PUBLIC ACCOUNTANTS”.

(4) The heading of section 41 is amended by repealing “**professional accountant**” and substituting “**certified public accountant**”.

(5) The by-laws are amended in the following provisions by repealing “Society” wherever it appears and substituting “Institute”—

- (a) by-law 2(1A);
- (b) by-law 3(4A) and (5);
- (c) by-law 4(2);
- (d) by-law 11(1) and (2);
- (e) by-law 13(1) and (2);
- (f) by-law 14;
- (g) by-law 15(2)(d);
- (h) by-law 16(1);
- (i) by-law 17(1), (1A) and (2);
- (j) by-law 18(1), (9) and (11);
- (k) by-law 22(2)(c);
- (l) by-law 30;
- (m) by-law 31(1)(c)(ii);
- (n) by-law 33(1), (2) and (3);
- (o) by-law 35(1)(ii);
- (p) by-law 37(a);
- (q) by-law 38(1), (2) and (5);
- (r) by-law 39(1)(a) and (b);
- (s) by-law 40(1) and (2)(a);
- (t) by-law 41(1);
- (u) by-law 42(1);
- (v) by-law 46(1);
- (w) by-law 47.

(6) The heading of Part III is amended by repealing “SOCIETY” and substituting “INSTITUTE”.

(7) The headings of by-laws 11, 14, 16 and 17 are amended by repealing “Society” and substituting “Institute”.

SCHEDULE 2

[s. 56]

CONSEQUENTIAL AMENDMENTS TO OTHER ORDINANCES

Bankruptcy Ordinance

1. Order for production of documents by Commissioner of Inland Revenue

Section 30D(1)(b) of the Bankruptcy Ordinance (Cap. 6) is amended by repealing “a professional accountant” and substituting “a certified public accountant”.

Bankruptcy (Forms) Rules

2. Schedule amended

The Schedule to the Bankruptcy (Forms) Rules (Cap. 6 sub. leg. B) is amended—

- (a) in Form 158, in the margin, in note (d), by repealing “a professional accountant” and substituting “a certified public accountant”;
- (b) in Form 159, in the margin, in note (d), by repealing “a professional accountant” and substituting “a certified public accountant”.

Judicial Trustee Rules

3. Accounts and audit

Rule 14(2) of the Judicial Trustee Rules (Cap. 29 sub. leg. B) is amended by repealing “a professional accountant” and substituting “a certified public accountant”.

4. Fees

The Schedule is amended by repealing “a professional accountant” and substituting “a certified public accountant”.

Companies Ordinance

5. Specific requirements as to particulars in prospectus

Section 38(1A) of the Companies Ordinance (Cap. 32) is amended by repealing “professional accountant” and substituting “certified public accountant”.

6. Special procedure for voluntary winding up of company in case of inability to continue its business

Section 228A(8)(b) is amended by repealing “a professional accountant” and substituting “a certified public accountant”.

7. Documents, etc. to be delivered to Registrar by companies which establish a place of business in Hong Kong

Section 333 is amended—

(a) in subsection (1)—

(i) in proviso (i), by repealing “professional accountants” and substituting “certified public accountants (practising)”;

(ii) in proviso (ii), by repealing “professional accountants” and substituting “certified public accountants (practising)”;

(b) by repealing subsection (4)(b) and substituting—

“(b) the expression “certified public accountants (practising)” (執業會計師) has the meaning assigned to it by the Professional Accountants Ordinance (Cap. 50);”.

8. Prohibition of partnerships with more than 20 members

Section 345(2)(b) is amended by repealing “or public accountants”.

Banking Ordinance

9. Interpretation

Section 2(1) of the Banking Ordinance (Cap. 155) is amended, in the definition of “auditor”, by repealing “a professional accountant holding a practising certificate under” and substituting “a certified public accountant (practising) as defined in”.

Accountant’s Report Rules

10. Qualifications of accountant

Rule 3(1)(a) of the Accountant’s Report Rules (Cap. 159 sub. leg. A) is amended by repealing “a professional accountant holding a practising certificate as provided” and substituting “a certified public accountant (practising) as defined”.

Solicitors’ Accounts Rules

11. Authority required for drawing money from client account

Rule 7A(1)(b) of the Solicitors’ Accounts Rules (Cap. 159 sub. leg. F) is amended by adding “(practising)” after “a certified public accountant”.

Solicitors (Professional Indemnity) Rules

12. Interpretation

Rule 2 of the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M) is amended, in the definition of “certified public accountant”, by adding “(practising)” after “certified public accountant”.

13. Production of documents and information

Rule 8 is amended—

- (a) in subrule (1)(a)(i) and (ii), by adding “(practising)” after “certified public accountant”;
- (b) in subrule (2), by repealing “certified public accountant’s” and substituting “certified public accountant (practising)’s”.

14. Contributions to fund

Schedule 1 is amended, in paragraph 2(1)(c) and (2), by repealing “certified public accountant’s” and substituting “certified public accountant (practising)’s”.

Money Lenders Regulations

15. Application for licence

Regulation 5(3)(b) of the Money Lenders Regulations (Cap. 163 sub. leg. A) is amended by repealing “professional accountant” and substituting “certified public accountant”.

Post Secondary Colleges Regulations

16. Constitution

Regulation 2(i) of the Post Secondary Colleges Regulations (Cap. 320 sub. leg. A) is amended by repealing “a professional accountant holding a practising certificate as provided” and substituting “a certified public accountant (practising) as defined”.

Building Management Ordinance

17. Interpretation

Section 2 of the Building Management Ordinance (Cap. 344) is amended, in the definition of “accountant”, by adding “(practising)” after “a certified public accountant”.

Ocean Park Corporation Ordinance

18. Interpretation

Section 2 of the Ocean Park Corporation Ordinance (Cap. 388) is amended, in the definition of “auditor”, by adding “(practising)” after “a certified public accountant”.

Occupational Retirement Schemes Ordinance

19. Interpretation

Section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426) is amended, in the definition of “Hong Kong accountant”, by repealing “a professional accountant” and substituting “a certified public accountant”.

20. Qualification of auditor

Section 68(2)(b)(i) is amended by repealing “a professional accountant” and substituting “a certified public accountant”.

Chiropractors (Registration and Disciplinary Procedure) Rules

21. Application for registration

Section 4(6)(k) of the Chiropractors (Registration and Disciplinary Procedure) Rules (Cap. 428 sub. leg. B) is amended by repealing “a professional accountant” and substituting “a certified public accountant”.

Hong Kong Arts Development Council Ordinance

22. Interpretation

Section 2 of the Hong Kong Arts Development Council Ordinance (Cap. 472) is amended, in the definition of “auditor”, by adding “(practising)” after “a certified public accountant”.

Mandatory Provident Fund Schemes (General) Regulation

23. Interpretation

Section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended, in the definition of “applicable accounting guideline”, in paragraphs (a) and (b), by repealing “Hong Kong Society of Accountants” and substituting “Hong Kong Institute of Certified Public Accountants”.

24. Qualifications for auditor

Section 98(1)(b) is amended by repealing “, or a public accountant,” and substituting “(practising)”.

25. Appointment of liquidator

Section 202(b) is amended by repealing “a professional accountant” and substituting “a certified public accountant”.

Estate Agents Ordinance

26. Interpretation

Section 2 of the Estate Agents Ordinance (Cap. 511) is amended—

(a) in subsection (1), by repealing the definition of “professional accountant” and substituting—

““certified public accountant (practising)” (執業會計師) has the meaning assigned to it in the Professional Accountants Ordinance (Cap. 50);”;

(b) in subsection (2)(b), by repealing “a professional accountant” and substituting “a certified public accountant (practising)”.

27. Investigations

Section 28(1) is amended by repealing “professional accountants” and substituting “certified public accountants (practising)”.

28. Accounts regulations

Section 37(2) is amended by repealing “a professional accountant” and substituting “a certified public accountant (practising)”.

**Estate Agents Practice (General Duties and Hong
Kong Residential Properties) Regulation**

29. Keeping of accounts and records

Section 12(8) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511 sub. leg. C) is amended by repealing “a professional accountant” and substituting “a certified public accountant (practising)”.

Legislative Council Ordinance

30. Composition of the accountancy functional constituency

Section 20G of the Legislative Council Ordinance (Cap. 542) is amended by repealing “professional accountants” and substituting “certified public accountants”.

Urban Renewal Authority Ordinance

31. Interpretation

Section 2 of the Urban Renewal Authority Ordinance (Cap. 563) is amended, in the definition of “auditor”, by repealing “shall be construed in accordance with section 43 of” and substituting “means a certified public accountant (practising) or a corporate practice as defined in”.

Hong Kong Science and Technology Parks Corporation Ordinance

32. Annual reports, accounts and audits

Section 23(7) of the Hong Kong Science and Technology Parks Corporation Ordinance (Cap. 565) is amended by repealing from “a person who” up to and including “of that Ordinance” and substituting “a certified public accountant (practising) or a corporate practice as defined in the Professional Accountants Ordinance (Cap. 50)”.

Securities and Futures Ordinance

33. Rules by recognized exchange company

Section 23 of the Securities and Futures Ordinance (Cap. 571) is amended—

- (a) in subsection (7), by repealing “professional accountant” and substituting “certified public accountant”;
- (b) in subsection (8)—
 - (i) by repealing “Hong Kong Society of Accountants” where it twice appears and substituting “Hong Kong Institute of Certified Public Accountants”;
 - (ii) in paragraph (a), by repealing “professional accountant” and substituting “certified public accountant”;
- (c) in subsection (9), by repealing “professional accountant” and substituting “certified public accountant”.

34. Certain agreements not to be made during unsolicited calls

Section 174(2)(a) is amended by repealing “professional accountant” and substituting “certified public accountant”.

35. Requirements for offers by intermediaries or representatives for Type 1, Type 4 or Type 6 regulated activity

Section 175 is amended—

- (a) in subsection (5)(d)(ii), by repealing “professional accountant” and substituting “certified public accountant”;
- (b) in subsection (9), in the definition of “expert”, by repealing “professional accountant” and substituting “certified public accountant”.

36. Preservation of secrecy, etc.

Section 378(3)(g)(ii)(A) is amended by repealing “Hong Kong Society of Accountants” and substituting “Hong Kong Institute of Certified Public Accountants”.

37. Interpretation and general provisions

Schedule 1 is amended, in Part 1, in section 1—

- (a) in the definition of “auditor”, by repealing “a professional accountant registered and holding a practising certificate under” and substituting “a certified public accountant (practising) as defined in”;
- (b) by repealing the definition of “professional accountant” and substituting—
““certified public accountant” (會計師) means a certified public accountant as defined in section 2 of the Professional Accountants Ordinance (Cap. 50);”.

38. Regulated activities

Schedule 5 is amended, in Part 2—

- (a) in the definition of “advising on corporate finance”, in paragraph (vii), by repealing “a professional accountant” and substituting “a certified public accountant”;
- (b) in the definition of “advising on futures contracts”, in paragraph (vii), by repealing “a professional accountant” where it twice appears and substituting “a certified public accountant”;
- (c) in the definition of “advising on securities”, in paragraph (vii), by repealing “a professional accountant” where it twice appears and substituting “a certified public accountant”;
- (d) in the definition of “asset management”, in paragraph (g), by repealing “a professional accountant” and substituting “a certified public accountant”.

39. Offers by intermediaries or representatives for Type 1, Type 4 or Type 6 regulated activity under section 175 of this Ordinance

Schedule 7 is amended—

- (a) in Part 1—
 - (i) in section 4(a), by repealing “professional accountant” and substituting “certified public accountant”;
 - (ii) in section 4(b), by repealing “專業會計師” and substituting “會計師”;
- (b) in Part 2—
 - (i) in section 8(a), by repealing “professional accountant” and substituting “certified public accountant”;
 - (ii) in section 8(b), by repealing “專業會計師” and substituting “會計師”.

Securities and Futures (Professional Investor) Rules

40. Persons prescribed as professional investors

Section 3(b)(i) of the Securities and Futures (Professional Investor) Rules (Cap. 571 sub. leg. D) is amended by repealing “a professional accountant” and substituting “a certified public accountant”.

Securities and Futures (Miscellaneous) Rules

41. Persons prescribed as auditors for purposes of section 179 of Ordinance

Section 5(1)(a) of the Securities and Futures (Miscellaneous) Rules (Cap. 571 sub. leg. U) is amended by repealing “a professional accountant registered and holding a practising certificate under” and substituting “a certified public accountant (practising) as defined in”.

Morrison Scholarships Fund Ordinance

42. Accounts and audit

Section 11(6) of the Morrison Scholarships Fund Ordinance (Cap. 1037) is amended by repealing “registered as professional accountants under” and substituting “certified public accountants (practising) as defined in”.

Po Leung Kuk Ordinance

43. Accounts

Section 7(4) of the Po Leung Kuk Ordinance (Cap. 1040) is amended by repealing “a professional accountant holding a practising certificate as provided” and substituting “a certified public accountant (practising) as defined”.

Tung Wah Group of Hospitals Ordinance

44. Accounts

Section 7(4) of the Tung Wah Group of Hospitals Ordinance (Cap. 1051) is amended by repealing “a professional accountant holding a practising certificate as provided” and substituting “a certified public accountant (practising) as defined”.

Chinese Permanent Cemeteries Ordinance

45. Accounts

Section 10(2) of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) is amended by repealing “a professional accountant holding a practising certificate as provided” and substituting “a certified public accountant (practising) as defined”.

Hong Kong Sports Development Board Ordinance

46. Interpretation

Section 2 of the Hong Kong Sports Development Board Ordinance (Cap. 1149) is amended, in the definition of “auditor”, by adding “(practising)” after “a certified public accountant”.

47. Accounts

Section 5N(2) is amended by adding “(practising)” after “a certified public accountant”.

Kadoorie Farm and Botanic Garden Corporation Ordinance

48. Interpretation

Section 2 of the Kadoorie Farm and Botanic Garden Corporation Ordinance (Cap. 1156) is amended, in the definition of “auditor”, by adding “(practising)” after “a certified public accountant”.

Hong Kong Sheng Kung Hui Ordinance

49. Audit

Section 13 of the Hong Kong Sheng Kung Hui Ordinance (Cap. 1157) is amended—

- (a) in subsection (1), by repealing “a professional accountant” and substituting “a certified public accountant (practising)”;
- (b) in subsection (2), by repealing “professional accountant” and substituting “certified public accountant (practising)”;
- (c) in subsection (3), by repealing ““professional accountant” (專業會計師)” and substituting ““certified public accountant (practising)” (執業會計師)”.

Church Body of the Hong Kong Sheng Kung Hui Ordinance

50. Audit

Section 11 of the Church Body of the Hong Kong Sheng Kung Hui Ordinance (Cap. 1158) is amended—

- (a) in subsection (1), by repealing “a professional accountant” and substituting “a certified public accountant (practising)”;
- (b) in subsection (2), by repealing “professional accountant” and substituting “certified public accountant (practising)”;
- (c) in subsection (3), by repealing ““professional accountant” (專業會計師)” and substituting ““certified public accountant (practising)” (執業會計師)”.

Hong Kong Sheng Kung Hui Foundation Ordinance

51. Audit

Section 11 of the Hong Kong Sheng Kung Hui Foundation Ordinance (Cap. 1159) is amended—

- (a) in subsection (1), by repealing “a professional accountant” and substituting “a certified public accountant (practising)”;
- (b) in subsection (2), by repealing “professional accountant” and substituting “certified public accountant (practising)”;

- (c) in subsection (3), by repealing ““professional accountant” (專業會計師)” and substituting ““certified public accountant (practising)” (執業會計師)”.

The Orthodox Metropolitanate of Hong Kong and South East Asia Ordinance

52. Interpretation

Section 2 of The Orthodox Metropolitanate of Hong Kong and South East Asia Ordinance (Cap. 1163) is amended—

- (a) in the definition of “Metropolitan Council”, by repealing the semicolon at the end and substituting a full stop;
- (b) by repealing the definition of “professional accountant” and substituting—
““certified public accountant (practising)” (執業會計師) means a person who is registered as a certified public accountant (practising) under the Professional Accountants Ordinance (Cap. 50);”.

53. Orthodox Cathedral of Saint Luke the Evangelist

Section 10(3)(e) is amended by repealing “a professional accountant” and substituting “a certified public accountant (practising)”.

54. Accounts and audit

Section 12(3) and (4) is amended by repealing “professional accountant” and substituting “certified public accountant (practising)”.

Explanatory Memorandum

The purpose of this Bill is to amend the Professional Accountants Ordinance (Cap. 50) and the Professional Accountants By-laws (Cap. 50 sub. leg. A) to change the name of the Hong Kong Society of Accountants (“Society”), membership structure, membership designations and practice units, to introduce self-regulation, to amend the disciplinary proceedings rules, to provide for enforcement of mandatory continuing professional development and to make a number of technical amendments.

2. (1) Clause 3 amends section 2 of the Ordinance, among others, to—
- (a) add a new definition of “appointed member”;
- (b) amend the definition of “certified public accountant”;
- (c) add a new definition of “certified public accountant (practising)”;
- (d) amend the definition of “professional accountant”;
- (e) change the name of the Society to the “Hong Kong Institute of Certified Public Accountants” (“Institute”); and
- (f) make other consequential amendments.

(2) Clause 5 amends section 3 of the Ordinance to change the name of the Society. Clause 54 repeals all references to “professional accountant” or “professional accountants” or “Society” in the Ordinance and substitutes “certified public accountant” or “certified public accountants” or “Institute” respectively.

3. Clause 8 amends section 8 of the Ordinance, among others, to—

- (a) empower the Institute to make by-laws to provide for admission of persons as affiliates and to cater for use of electronic means for the provision and retention of information, the giving of notice, election and voting, electronic signature and other transactions;
- (b) provide that a proxy appointed by a member to attend a general meeting of the Institute can vote on the making of or any amendment to by-laws.

4. (1) Clause 10 amends section 10 of the Ordinance, among others, to—

- (a) expand the size of the elected membership of the Council of the Institute (“Council”) from 12 to 14;
- (b) appoint the immediate past President of the Institute to the Council for a term of 1 year;
- (c) add 4 Government appointed lay members (other than Government officials) to the Council and each for a term of 2 years subject to renewal by the Government; and
- (d) delete references to Government’s appointment of academics to the Council.

(2) Clause 12 amends section 12 of the Ordinance to change the number of compulsory retirement of elected members at an annual general meeting due to the increased number of the elected membership of the Council. Clause 13 amends section 15 of the Ordinance to provide for automatic vacation of office of appointed members by reason of bankruptcy or cessation of residency.

5. Clause 14 amends section 16 of the Ordinance to enable the Institute to prepare a summary of its financial statements for distribution to members instead of sending to each member a copy of the signed and audited statement of accounts. Members may inspect and obtain a copy of the signed and audited statement of account without charges.

6. Clause 16 adds a new section 18B to the Ordinance to specify the Council’s powers to give specific or general directions which may be applicable to a specific member or a group of members of the Institute. Such powers cover the production of testimonials and other documents used in applications for registration with the Institute or issue of a practising certificate and return of cancelled or invalid practising and registration certificates. New section 18B(2) links new section 18B to section 34(1)(a)(ix) of the Ordinance on

disciplinable offences for the avoidance of doubt. New section 18B(3) introduces a limited form of consent order and fixed penalty between the Council and a member for the member's breach of direction under new section 18B(1). New section 18B(4) provides that the powers to give directions apply to members as individuals as well as firms and corporate practices.

7. Clause 17 amends section 22 of the Ordinance to enable all professional accountants on the register immediately before the commencement of the Bill when enacted to be deemed to be registered as certified public accountants on the "relevant day" as defined in the Ordinance.

8. Clause 18 amends section 24 of the Ordinance to include membership with an accountancy body which has an agreement of mutual or reciprocal recognition with the Institute, or which has been granted exemption by the Institute as a qualification for registration as a certified public accountant. Section 24 of the Ordinance also continues to recognize the qualification of persons registered as professional accountants at any time before the "relevant day" as defined in the Ordinance.

9. Clause 21 amends section 28 of the Ordinance to allow late application for renewal of registration and include compliance with the Institute's continuing professional development requirements as a qualification for renewal of registration.

10. Clause 22 amends section 28A of the Ordinance to permit the Council to stipulate the proportion of partners of a firm required to be holders of practising certificates. New section 28A(6) declares that only a holder of current practising certificate can sign an audit report on behalf of a firm, similar to the requirement in section 28D(11)(b)(iii) of the Ordinance which applies to a corporate practice.

11. Similar to the amendment made in respect of registration of a partnership of certified public accountants, clause 25 amends section 28D of the Ordinance to permit the Council to stipulate the proportion of members of a corporate practice required to be holders of practising certificates.

12. Clause 29 amends section 30 of the Ordinance to add a new section 30(7), (8) and (9). New section 30(7) empowers the Council not to issue and to cancel the practising certificate of a certified public accountant who has become bankrupt or entered into a voluntary arrangement with his creditors. New section 30(8) gives wider powers to the Council to refuse to issue a practising certificate due to non-compliance with the Institute's continuing professional development requirements, or to issue practising certificates subject to conditions. New section 30(9) empowers the Council to suspend or cancel a practising certificate if the certified public accountant has not complied with the conditions imposed under new section 30(8).

13. Clause 34 adds a new section 32I to the Ordinance to prevent technical arguments to the effect that if there is a change in the composition of a practice unit, the practice review cannot be continued against the practice unit after the change. New section 32I(1) removes doubts regarding changes in the partners of a firm, changes in the directors of a corporate practice, the admission of a partner by a sole proprietor and the change in name of a practice unit.

14. Clause 35 amends section 33 of the Ordinance, among others, to—

- (a) provide for 2 Disciplinary Panels from which a Disciplinary Committee is formed; Disciplinary Panel A comprises not less than 18 lay members (non-accountants) appointed by the Chief Executive and Disciplinary Panel B comprises not less than 12 certified public accountants (of whom not less than 6 shall be holders of practising certificates) appointed by the Council; and
- (b) the Chief Executive is to appoint a Disciplinary Panel A member to be the Disciplinary Committee Convenor and another to be his alternate who shall act in his place in circumstances where the Disciplinary Committee Convenor is precluded from acting; whenever there is a complaint to be dealt with by a Disciplinary Committee, the Convenor has the power and duty to appoint 5 members of a Disciplinary Committee with the ratio of lay members to certified public accountants being 3:2, and that the chairman of the Disciplinary Committee must be a lay member (non-accountant); and
- (c) the Convenor shall not be appointed to any Disciplinary Committee formed during his one-year term as a Convenor.

15. Clause 36 adds a new subsection (1AAA) to section 34 of the Ordinance to give a member of the public who is aggrieved by a decision of the Council the right to bring a complaint against a certified public accountant or a corporate practice directly to the Disciplinary Panels and to redefine “dishonourable conduct” in section 34(2) of the Ordinance.

16. (1) Clause 37 amends section 35 of the Ordinance to empower a Disciplinary Committee to—

- (a) cancel and not to issue the practising certificate of a member either permanently or temporarily; and
- (b) determine the effective date of a disciplinary order and to provide for suspension of application of an order subject to conditions in replacement of “postponement of judgment”.

(2) Clause 28 consequentially amends section 29A of the Ordinance to add a new section 29A(1B) to specify that a practising certificate shall not be issued to an applicant against whom a disciplinary order has been made to that effect.

17. Clause 38 adds new sections 35A and 35B to the Ordinance. New section 35A enables the Institute to pay fees to members of a Disciplinary Committee. This is consistent with section 42F of the Ordinance which enables the Institute to pay fees to members of an Investigation Committee. New section 35B enables a Disciplinary Committee, the complainant and a certified public accountant to agree to a consent order for relatively minor offences instead of having a full hearing of the complaint. Unless the complainant and the certified public accountant agree to the terms of the consent order proposed by the first Disciplinary Committee within 14 days or such longer time from the date of notice, the complaint will be heard afresh by a second Disciplinary Committee constituted by different members. A consent order is not subject to appeal or a stay pending appeal.
18. Clause 39 amends section 36 of the Ordinance to provide for public hearing of the proceedings of a Disciplinary Committee except in exceptional circumstances. The power of a Disciplinary Committee to admit or exclude members of the public from the proceedings is also removed.
19. Clause 40 amends section 37 of the Ordinance to allow a certified public accountant to be represented at a Disciplinary Committee hearing by lawyers or any other persons with the approval of the Disciplinary Committee.
20. Clause 42 amends section 41(3) of the Ordinance to provide for the Court of Appeal to award costs.
21. Clause 43 amends section 41A of the Ordinance as a consequential amendment.
22. Clause 44 adds a new section 41B to the Ordinance to provide for an express statutory immunity for members of the Disciplinary Committee, parties to the proceedings and their representatives and witnesses.
23. Clause 45 amends section 42B of the Ordinance, among others, to—
 - (a) provide for 2 Investigation Panels from which an Investigation Committee is formed; Investigation Panel A comprises not less than 18 lay members (non-accountants) appointed by the Chief Executive and Investigation Panel B comprises not less than 12 certified public accountants (of whom not less than 6 shall be holders of practising certificates) appointed by the Council; and
 - (b) the Chief Executive is to appoint an Investigation Panel A member to be the Investigation Committee Convenor and another to be his alternate who shall act in his place in circumstances where the Investigation Committee Convenor is precluded from acting.

24. Clause 46 amends section 42C of the Ordinance to provide that the Investigation Committee Convenor has the power and duty to appoint 5 members of an Investigation Committee to deal with a particular case when an investigation is instigated by the Council. Lay members including the chairman will form the majority of each Investigation Committee with the ratio of lay members to certified public accountants being 3:2. The Convenor shall not be appointed to any Investigation Committee formed during his one-year term as a Convenor.

25. Clause 47 amends section 42D of the Ordinance to extend the power of an Investigation Committee to obtain information and documents not only from the relevant certified public accountant, firm or corporate practice but also from any member and registered student of the Institute, and from any employer, employee and former employer and employee of the relevant party.

26. Clause 48 adds a new section 42H to the Ordinance which provides immunity similar to section 32G of the Ordinance (for the Practice Review Committee) so that persons involved in statutory investigation cases will be given the same protection from liability when they act in good faith in the performance of function or exercise of power under Part VA of the Ordinance.

27. Clause 49 amends section 42 of the Ordinance to expand the restrictions on use of specified designations and descriptions by unqualified person and to add a new section 42(1)(ia). New section 42(1)(ia) prohibits a certified public accountant who does not hold a practising certificate from using the description “certified public accountant” or the initials “CPA” or the characters “會計師” in his business, trade or profession unless such business, trade or profession is carried in his own name without any addition as registered with the Institute.

28. Clause 50 repeals section 43 of the Ordinance which no longer applies.

29. Clause 52 amends section 51 of the Ordinance to add a new section 51(4). New section 51(4) declares, for the avoidance of doubt, that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply to rules made under section 51 of the Ordinance.

30. Clause 53 adds new sections 52 and 53 to the Ordinance. New section 52 enables the Council to delegate any of the powers or duties granted to or imposed on the Council under the Ordinance (other than the power to make rules under section 51 of the Ordinance) to any person or a committee with power of sub-delegation by such person or committee. New section 53 provides for general immunity for the members of the Council, officers and employees of the Institute and the Registrar when they act in good faith in the performance of function or exercise of power under the Ordinance.

31. Clause 55 amends the Professional Accountants By-laws (Cap. 50 sub. leg. A), among others, to—

- (a) change the existing time-frame for Council elections to enable members, particularly those residing or working outside Hong Kong, to have more time to exercise their voting rights;
- (b) enable the Council to send out ballots by electronic means and to accept electronic voting in addition to the existing paper format;
- (c) require a minimum of 100 members or 0.5% of the total membership, whichever is the lower, to call a general meeting of the Institute;
- (d) require a minimum of 50 members to propose a resolution unrelated to the ordinary business at an annual general meeting of the Institute;
- (e) change the designations of members and fellows, and the descriptions for holders of practising certificates and practice units;
- (f) give a member of the public who is aggrieved by a decision of the Council the right to bring a complaint against a registered student directly to a Disciplinary Committee, similar to the right of a member of the public to bring a complaint directly against a certified public accountant;
- (g) bring the disciplinary proceedings for registered students in line with those for certified public accountants by providing for public hearing of the disciplinary proceedings except in exceptional circumstances, formalizing the right of a party to be represented by lawyers or any other persons and empowering a Disciplinary Committee to make order regarding the costs of a disciplinary hearing;
- (h) enable a Disciplinary Committee, the complainant and a registered student to agree to a consent order for relatively minor offences instead of having a full hearing of the complaint. Unless the complainant and the registered student agree to the terms of the consent order proposed by the first Disciplinary Committee within 14 days or such longer time from the date of notice, the complaint will be heard afresh by a second Disciplinary Committee constituted by different members. A consent order is not subject to appeal; and
- (i) enable a Disciplinary Committee to determine the effective date of any disciplinary order removing a registered student from the register or temporarily prohibiting a registered student from sitting for examinations of the Institute.

32. Clause 56 makes consequential amendments to other Ordinances which refer to provisions in the Ordinance or make references to the various descriptions of accountants, such as professional accountant or certified public accountant.