

立法會
Legislative Council

LC Paper No. LS60/03-04

**Paper for the House Committee Meeting
on 16 April 2004**

**Legal Service Division Report on
Professional Accountants (Amendment) Bill 2004**

(Private Member's Bill)

I. SUMMARY

1. **Objects of the Bill**
 - (a) To change the name of the Hong Kong Society of Accountants to the Hong Kong Institute of Certified Public Accountants (the Institute);
 - (b) to alter the composition of its Council (the Council) and to expand the membership of the Council;
 - (c) to reform the investigation and disciplinary mechanism;
 - (d) to broaden the powers of the Council and the Investigation Committee and the sanctions available to the Disciplinary Committee;
 - (e) to make miscellaneous technical amendments and consequential amendments to the Professional Accountants By-laws (Cap. 50 sub. leg. A) and other legislation.

2. **Comments**

The amendments are largely technical. From a policy point of view, the more significant aspects are perhaps the expanded role of lay persons in the governance of the Institute, the reform of the investigation and disciplinary mechanism, and the broadening of the powers of the Council. The Bill is a private member's Bill sponsored by the Hon Li Ka-cheung, Eric. It has been introduced with the written consent of the Chief Executive in compliance with Rule 51(4) of the Rules of Procedure of the Legislative Council.

3. **Public Consultation**

The public has not been consulted.

4. **Consultation with LegCo Panel**

The Panel on Financial Affairs has been briefed of the proposed amendments at its meeting on 13 June 2003.

5. **Conclusion**

Subject to the draft Committee Stage Amendments set out in the **Annex**, no difficulties have been observed on the legal and drafting aspects of the Bill. Unless Members have other views, the Bill is ready for the resumption of Second Reading debate.

II. REPORT

Objects of the Bill

To amend the Professional Accountants Ordinance (Cap.50) (the Ordinance):-

- (a) to change the name of the Hong Kong Society of Accountants (HKSA) to the Hong Kong Institute of Certified Public Accountants (the Institute);
- (b) to alter the composition of the Council of the Institute (the Council), to restructure the Investigation Panel and the Disciplinary Panel;
- (c) to expand the membership of the Council and the Investigation Committee;
- (d) to broaden the powers of the Council and the Investigation Committee and the sanctions available to the Disciplinary Committee;
- (e) to provide immunity to members of the Council and its delegates, the Registrar and officers and employees of the Institute exercising statutory powers in good faith;
- (f) to make miscellaneous technical amendments; and
- (g) consequential amendments to the Professional Accountants By-laws (Cap. 50 sub. leg. A) (By-laws) and to other Ordinances and subsidiary legislation.

LegCo Brief Reference

2. The LegCo Brief dated 24 March 2004 and issued by the HKSA.

Date of First Reading

3. 24 March 2004.

Comments

4. To avoid confusion, the HKSA will hereinafter be referred to as "the Institute" in relation to all the proposed amendments in the Bill. It will only be referred to as "the Society" when the context so requires.

5. The overwhelming majority of the proposed amendments in the Bill are technical in nature. They include the following:-

- (a) the change of the name of the HKSA to the Hong Kong Institute of

Certified Public Accountants (clause 5) and the consequential amendments occasioned (clause 54(7), (8) and (9) and the relevant provisions in Schedules 1 and 2);

- (b) simplification of the designation of accountants into two major categories: certified public accountant and certified public accountant (practising) (clauses 3 and 17) and the resulting consequential amendments (clause 54(1) to (6) and the relevant provisions in Schedules 1 and 2);
- (c) the description of "change in the composition of practice unit" and the provision for the continuity of liabilities, obligations and rights of a practice unit after a change in composition (clause 34);
- (d) the compulsory retirement of elected members (clause 12); and
- (e) amendments to the By-laws —
 - (i) to enable balloting for election of members of the Council to be conducted by electronic means (clause 2(b) of Schedule 1);
 - (ii) to provide a new definition of the "longest serving Vice-President" (clause 4 of Schedule 1);
 - (iii) to allow the Council to admit a person in good standing as a member of an accountancy body that is a member of the International Federation of Accountants as an international affiliate of the Institute (clause 10 of Schedule 1);
 - (iv) to change the various notice periods and time limits for specific acts of the Registrar (clauses 1(a), 2(a), 5(b), 6(a) and (c), 21 and 22 of Schedule 1); and
 - (v) to allow a certified public accountant to practise in the name or style of a deceased certified public accountant and as an employee of the personal representative of such deceased (clause 14 of Schedule 1).

6. From a policy point of view, the more significant aspect is the changes made in relation to the governance of the Institute. These changes may be grouped under three main themes: 1) the expanded role of lay persons; 2) the broadening of the powers of the Council; and 3) the reform of the investigation and disciplinary mechanism.

The expanded role of lay persons

7. At present the Council could have 18 members (section 10 of the Ordinance). Only two academia members appointed by the Chief Executive (CE) and the two ex-officio members may be lay persons. Under the Bill, the number of members of the Council will be increased to 23 (clause 10(b)). Four of them would be lay persons appointed by CE (clause 10(b)(vi)) in addition to the two ex-officio members. They would be appointed for a term not exceeding two years and eligible for reappointment for further terms not exceeding two years each.

8. The Investigation Panel and the Disciplinary Panel would both be

restructured. There would be two Investigation Panels (clause 45(a)) and two Disciplinary Panels (clause 35(a)). Panel A would in each case comprise of not less than 18 lay persons appointed by CE and one of them would be appointed the relevant Committee Convenor. Panel B would in each case be constituted by not less than 12 certified public accountants appointed by the Council, of whom not less than six must be holders of practising certificates. Lay persons would have a majority on any Investigation Committee and Disciplinary Committee as the chairman and two members of each Committee would be appointed from Panel A.

The broadening of powers of the Council

9. The Council would, in connection with the discharge of any of its functions or duties or the exercise of any of its powers, be empowered to give directions to certified public accountants (CPAs) either generally or individually requiring the production of any document or information to the Institute relating to the registration of CPAs or the issuing of practising certificates, the delivering up of cancelled or invalid practising certificates, an explanation of any unbecoming or disreputable act or omission of a CPA in relation to his practice and conduct as a CPA (clause 16). Penalties could be imposed by the Council against a CPA for any failure to comply with its direction.

10. The Council would have the power not to issue a practising certificate if the applicant has not complied with the Institute's requirements for continuing professional development or, alternatively, to issue a practising certificate subject to the continuing professional development requirements being complied with within a specified period (clause 29(d)). It would also have power to cancel the practising certificate of a CPA who is or has become bankrupt or has entered into voluntary arrangement with his creditors or not to issue a practising certificate to such CPA.

11. The Council would have the power to delegate any of its powers or duties under the Ordinance to any person or to a committee of the Council except the power to make rules (clause 53 - proposed section 52). It could also authorize such delegates to sub-delegate the powers delegated.

12. 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 would have no personal liability in respect of any act made or omission committed in good faith in the performance or exercise or purported performance or exercise of any function or power under the Ordinance (clause 53 - proposed section 53). The Institute itself is not immune from suit for any misfeasance.

Reform of the Investigation and Disciplinary Mechanism

13. Each of the Investigation Committee and the Disciplinary Committee would have its Chairman and two members appointed from the respective Panel A of lay persons and two members appointed from the respective Panel B of CPAs (clauses 46(c)(ii) and 35(c)(ii)). The appointments for each Committee would be made by the relevant Convenor, who would be a lay person appointed from the respective Panel A and could not appoint himself to be a member of a Committee. A Convenor would

be appointed for a term not exceeding one year and would be eligible for reappointment for further terms not exceeding one year each.

14. The Investigation Committee would be empowered to require production of records and documents not only from the CPA, firm of CPAs or corporate practice under investigation and his, their or its employees and former employees, but also from any CPA, firm of CPAs or corporate practice and any of his, their or its employees and former employees who is a CPA or a student registered with the Institute (clause 47).

15. Unless the Council is of the opinion that no prima facie case has been shown for a complaint, or that a complaint is frivolous or vexatious, it must refer a complaint to the Disciplinary Panels at the request of the complainant (clause 36(d)).

16. Every hearing of the Disciplinary Committee must be held in public unless it determines that in the interest of justice a hearing or any part thereof should not be held in public (clause 39). Members of a Disciplinary Committee would be paid fees at such rate as from time to time fixed by the Council and such expenses that the Council may deem fit (clause 38 - proposed section 35A).

17. In respect of a complaint relating to professional misconduct, breach of professional standard, a director of a corporate practice rendering service without due registration as such or a director practising accountancy as such without proper professional indemnity insurance being referred to a Disciplinary Committee, the consent order provisions may apply (clause 38 - proposed section 35B). Under the proposed section, the Disciplinary Committee may without hearing give notice to the complainant and the CPA stating its view as to the orders proposed to be made. The orders must be no more than those specified in the provisions, i.e. a reprimand, a penalty not exceeding \$50,000 and the payment of the costs and expenses of and incidental to the proceedings of the Institute or the complainant. If the complainant and the CPA consent to the proposed orders to be made, such orders will be deemed to orders made under section 35 of the Ordinance. If there is no consent, the Disciplinary Committee will be dissolved and a new Disciplinary Committee will be constituted to deal with the complaint afresh without resorting to the consent order provisions.

18. In response to our observations on the drafting aspects of the Bill, the HKSA has agreed to move the Committee Stage Amendments (CSAs) set out at the **Annex**.

19. The Bill is a private member's Bill sponsored by the Hon Li Ka-cheung, Eric. It has been introduced with the written consent of CE in compliance with Rule 51(4) of the Rules of Procedure of the Legislative Council.

Public Consultation

20. The public has not been consulted on the Bill as the matters are, in the

opinion of HKSA, within the ambit of self-regulation of the Society.

Consultation with LegCo Panel

21. The Panel on Financial Affairs (FA Panel) has been briefed of the proposed amendments of the Bill at its meeting on 13 June 2003. During the meeting, a member queried the need for the HKSA to initiate the proposed amendments as a Private Member's Bill and commented that they could be incorporated in the amendments to be introduced by the Administration later on. The representatives of the HKSA explained that the Society wished to expedite the legislative process of the proposed amendments so that it could respond quickly to international development and public expectations of the accounting profession.

22. At its meeting on 2 April 2004, the FA Panel was briefed by the Administration on the progress of the initiatives to enhance the regulation of the accountancy profession and preparers of financial statements. Members noted that some of the initiatives had been taken forward in the Bill. On the proposal to increase the number of lay members on the Council, a member pointed out that currently there was no appointment of lay members to the governing councils of self-regulatory professional bodies, such as the Law Society of Hong Kong and the Hong Kong Medical Association. He was concerned that the proposal would signify a departure from the general principle of self-regulation of professional bodies and might have an impact on the governance structure of other professional bodies. The Administration explained that given the significant impact of the work of the accountancy profession on the financial services market and the general public as a whole, there was a need to enhance the oversight of the profession and the transparency of the Council, particularly when confidence in the profession had been brought into sharp focus after the corporate scandals in the United States. The proposal would serve these purposes.

Conclusion

23. Subject to the draft CSAs, no difficulties are observed on the legal and drafting aspects of the Bill. Unless Members have other views, the Bill is ready for the resumption of Second Reading debate.

Encl

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2 April 2004

PROFESSIONAL ACCOUNTANTS
(AMENDMENT) BILL 2004

COMMITTEE STAGE

Amendments to be moved by the Honourable Eric LI Ka-cheung, JP

<u>Clause</u>	<u>Amendment Proposed</u>
28(e)	In the proposed section 29A(1B), by deleting "如紀律委員會根據第 35(1)(db)條針對申請人作出的飭令不得向他發出執業證書的命令正具有效力，則不得向他發出執業證書" and substituting "在紀律委員會根據第 35(1)(db)條作出針對申請人的命令中所述的期間，不得向申請人發出執業證書".
Schedule 2	By adding - "Travel Agents Regulations 15A. Forms The Second Schedule to the Travel Agents Regulations (Cap.218 sub. leg. A) is amended - (a) in Form 4, in question 5(a), by adding "(practising) as defined in the Professional Accountants Ordinance (Cap.50)" after "accountant"; (b) in Form 5, in question 4(a), by adding "(practising) as defined in the Professional Accountants Ordinance (Cap.50)" after "accountant".
Schedule 2, Section 20	By deleting the clause.

Schedule 2,
Section 52(b)

By deleting the proposed definition of "certified public accountant (practising)" and substituting -

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

Schedule 2

By adding -

"Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation

55. Interpretation

Section 2(1) of the Electoral Affairs Commission (Financial Assistance for Legislative Council Elections) (Application and Payment Procedure) Regulation L.N. 269 of 2003 is amended, 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".