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Paper for the House Committee meeting on 18 June 2004

**Report of the Bills Committee on
Professional Accountants (Amendment) Bill 2004**

Purpose

This paper reports on the deliberations of the Bills Committee on Professional Accountants (Amendment) Bill 2004 (the Bill).

Background

2. The accountancy profession in Hong Kong is subject to a self-regulatory regime in which the Hong Kong Society of Accountants (HKSA) plays a pivotal role. The Professional Accountants Ordinance (Cap. 50) (the Ordinance) establishes the HKSA and sets out its objects (section 7 of the Ordinance), powers and functions. HKSA's objects include maintaining a register of professional accountants; regulation of practices; education and maintaining the integrity of the profession. In pursuing these objectives, HKSA sets the admission and continuing registration criteria for its members; sets the accounting and auditing standards, including ethical standards; oversees the quality of auditing practices and monitors compliance with standards; conducts investigations and exercises disciplinary powers where warranted.

3. The landscape within which professional accountants operate has undergone dramatic changes in recent years. Confidence in the profession has been brought into sharp focus after the corporate scandals in the United States. In response to the Administration's request to enhance the element of oversight in the present regulatory regime, HKSA put forward in late January 2003 a series of proposals to open up its governance structure and to improve the present regulatory processes enshrined in the law. The major proposals include -

- (a) increasing the number of lay members in the HKSA Council (i.e. its governing body);
- (b) expanding the membership of the Investigation Committee instigated by the HKSA Council from three to five, and altering the

composition of the Investigation Committee, with the majority of members (including the chairman) being lay persons;

- (c) altering the composition of the 5-member Disciplinary Committee instigated by the HKSA Council, with the majority of members (including the chairman) being lay persons; and
- (d) establishing an Independent Investigation Board (IIB) to deal with alleged accounting, auditing and/or ethics irregularities related to the audit of companies listed on the Stock Exchange of Hong Kong.

4. The Administration welcomes HKSA's proposals as a move in the right direction and considers that the proposals in (a) to (c) above are key steps in enhancing the oversight of HKSA's key functions and thus the oversight over the accountancy profession. As regards the proposal to establish an IIB, the Administration has undertaken a separate consultation exercise and reported the outcome to the Panel on Financial Affairs in April 2004. Since the IIB proposal will be taken forward in the form of a Government Bill, HKSA considers it desirable to proceed with the proposals set out in (a) to (c) above as the first step. In parallel, HKSA has been drafting some amendments to the Ordinance on certain operational matters and the re-branding proposals of the Society, HKSA therefore takes the opportunity to combine these proposals with the above proposals for enhancement of the oversight of the accountancy profession into a Member's Bill. The Bill was presented by Dr Hon Eric LI to the Legislative Council on 24 March 2004 after the written consent of the Chief Executive has been obtained in compliance with Rule 51(4) of the Rules of Procedures of the Legislative Council.

The Bill

5. The Bill seeks to amend the Ordinance to -
- (a) change the name of HKSA to "Hong Kong Institute of Certified Public Accountants"¹ and the designation of its members from "professional accountants" to "certified public accountants";
 - (b) expand the membership of the Council of HKSA (the Council) by increasing the number of lay members and the number of elected members;

¹ For the purpose of this report, the name "Hong Kong Society of Accountant" or "HKSA" is used in all contexts, including references to future situations upon enactment of the Bill.

- (c) reform the investigation and disciplinary mechanism under the Ordinance, including the expansion of the membership of an Investigation Committee appointed by the Council from three to five, with the majority of members (including the chairman) being lay persons, and altering the composition of a Disciplinary Committee appointed by the Council, with the majority of members (including the chairman) being lay persons;
- (d) broaden the powers of the Council and the Investigation Committee and the sanctions available to the Disciplinary Committee;
- (e) provide immunity to members of the Council and its delegates, the Registrar and officers and employees of HKSA exercising statutory powers in good faith;
- (f) make miscellaneous technical amendments; and
- (g) make consequential amendments to the Professional Accountants By-laws (Cap. 50 sub. leg. A) and to other Ordinances and subsidiary legislation.

According to HKSA, the proposed amendments in the Bill were endorsed at its extraordinary general meetings on 11 November 2002 and 7 July 2003.

The Bills Committee

6. At the House Committee meeting on 7 May 2004, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon SIN Chung-kai, the Bills Committee has held four meetings with HKSA and the Administration. The membership list of the Bills Committee is at **Appendix I**. The Bills Committee has invited the public to give views on the Bill by posting an invitation notice on the web site of the Legislative Council and issuing invitation letters to all the District Councils. No submission has been received.

Deliberations of the Bills Committee

Expanded role of lay members

The Council of HKSA

7. At present the Council may have a maximum of 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 Council will have a maximum of 23 members. In addition to the two ex-officio members (the Financial Secretary and the Director of Accounting Services or their representatives),

four lay persons will be appointed by CE. These four lay members will be appointed for a term not exceeding two years and eligible for reappointment for further terms not exceeding two years each.

The Investigation Panels and Investigation Committee

8. Under the existing Ordinance, there is an Investigation Panel consisting of not less than 12 members appointed by the Council. All members of the Panel must be professional accountants. The Council may constitute an Investigation Committee consisting of three members drawn from the Investigation Panel for investigation into alleged misconduct or breaches of professional standards by a member of the HKSA.

9. Under the Bill, there will be 2 Investigation Panels from which an Investigation Committee is to be formed. Investigation Panel A will comprise not less than 18 lay members appointed by CE and Panel B will comprise not less than 12 professional accountants appointed by the Council. The number of members on an Investigation Committee will be increased from three to five, with three lay members including the chairman drawn from Panel A. All five members of an Investigation Committee will be appointed by a convenor to be appointed by CE from Panel A.

Disciplinary Panels and Disciplinary Committee

10. Under the existing Ordinance, there is a Disciplinary Panel consisting of not less than 15 members, at least 12 of whom must be professional accountants and at least three must be lay persons, all appointed by the Council. From the Disciplinary Panel, the Council may constitute a Disciplinary Committee to determine whether a member of HKSA should be disciplined and the penalty to be handed down. A Disciplinary Committee comprises five members and may include one lay member at the Council's discretion. The chairman of a Disciplinary Committee is appointed by the Council, who in turn appoints the other four members of the Committee.

11. Under the Bill, the Disciplinary Panels and Disciplinary Committee will be restructured in a manner similar to the arrangements for the Investigation Panels and Investigation Committee, i.e., there will be two Disciplinary Panels from which a Disciplinary Committee is to be constituted. Lay members, including the chairman will form the majority of a Disciplinary Committee. The ratio of lay members to professional accountants will be 3:2.

Lay-member representation in the self-regulatory regimes of other professions in Hong Kong and of the accountancy bodies in other jurisdictions

12. In regard to the proposed enhancement of lay members' role in the self-regulatory regime of the accountancy profession, the Bills Committee has studied the lay member representation in the governing council and the investigative and disciplinary bodies of the medical profession and legal profession in Hong Kong and of the accountancy bodies in the United Kingdom and Australia.

13. In the case of other professions in Hong Kong, there are lay members in the Medical Council of Hong Kong. Out of the 21 members in the council, four are lay members. The ratio of lay membership in its Preliminary Investigation Committee is one in seven. There is no lay member in the Council of the Law Society of Hong Kong nor in the Council of the Hong Kong Bar Association. The Chief Justice appoints a Solicitors Disciplinary Tribunal Panel and a Barristers Disciplinary Tribunal Panel, from which Solicitors Disciplinary Tribunals and Barristers Disciplinary Tribunals are formed respectively to deal with disciplinary matters. In both Panels, lay members form a minority and each Solicitors/Barristers Disciplinary Tribunal has one lay member out of the three members of the tribunal.

14. As regards the accountancy body in the United Kingdom, there is no lay member on the council, but one quarter of the members of its investigative and disciplinary bodies are lay members. In Australia, there is again no lay member in its governing council. It is only in its disciplinary committee that "non-members" (i.e. lay members) are included.

Appointment of lay members by the Chief Executive

15. The Bills Committee note that there are no provisions in the Bill specifying from which sectors CE will appoint the lay members to the Council and the members to Investigation Panel A and Disciplinary Panel A. In this connection, the Administration has advised that as there are already some lay members in the existing Disciplinary Panel, the Administration will discuss with HKSA on the suitability of their continued appointment in Disciplinary Panel A. The Chief Executive will appoint other lay members from the academia, the business sector, the relevant regulatory bodies, and professionals of relevant sectors having regard to the respective functions of the Council and the Panels.

16. The Bills Committee notes that the purpose of increasing the number of lay members in the Council and introducing a majority of lay members into the Investigation Committee and Disciplinary Committee is to provide further assurance to the public on the transparency and objectivity in HKSA's investigation and disciplinary processes. The Bills Committee supports the initiative of HKSA to open up its governance structure.

Reform of the investigation and disciplinary mechanism

Proposals to enhance public oversight of the accountancy profession

17. The Bills Committee notes that apart from introducing a majority lay element into the Investigation Committee and Disciplinary Committee, there are other proposals in the Bill which are aimed at enhancing the public accountability and public oversight of the accountancy profession. Proposed new section 34(1AAA) provides that a complainant aggrieved by the Council's decision not to refer a complaint to the Disciplinary Panels may request the Council to refer the complaint to

the Panels. The Council shall heed the request unless it is of the opinion that there is no prima facie case for the complaint, or that the complaint is frivolous or vexatious. At present, the Council is not obliged by statute to entertain such a request from a complainant.

18. Currently, there is no provision in the Ordinance as to whether the hearings of the Disciplinary Committee should be held in public or in camera, but HKSA's Disciplinary Committee Proceedings Rules, which are non-statutory rules, provide for hearings to be held in camera unless the Disciplinary Committee decides otherwise. Proposed section 36(1A) provides that every hearing of the Disciplinary Committee shall be held in public unless on its own motion or on application of the complainant or the certified professional accountant (CPA) concerned, the Disciplinary Committee determines that in the interests of justice a hearing or any part thereof shall not be held in public.

19. Concern has been raised by a member that public hearings may subject the CPA concerned to premature publicity and this may tarnish the reputation of an innocent CPA. HKSA advises that the proposal is supported by most HKSA members though some HKSA members did raise concern about the effect of premature publicity on the reputation of the CPA concerned and other related issues. HKSA considers that the proposal is consistent with the community's expectation for greater transparency in HKSA's administration of quasi-judicial functions in respect of its members. The risk of premature publicity adversely affecting innocent members is no greater than the risk inherent in the publicity surrounding open court hearings. HKSA considers that professional accountants should not be treated differently from other members of the general public. Furthermore, opening the disciplinary proceedings to public scrutiny will also serve to protect the CPA concerned and is consistent with the spirit of the Hong Kong Bill of Rights Ordinance (Cap. 383). Based on these considerations, the HKSA Council has decided to adopt the proposal for the hearings of the Disciplinary Committee to be held in public as a norm.

20. While the Bills Committee supports HKSA's proposal, some members point out that the proposal should not be presumed as setting an example for other professions, as the holding of disciplinary hearings in public or camera for other professions may be subject to certain considerations that are not relevant to the accountancy profession. Hence, holding disciplinary hearings in public may not be an appropriate arrangement for some other professions.

Costs and expenses involved in the investigation and disciplinary proceedings

21. Under the existing and proposed section 35(1)(h), a Disciplinary Committee may make such order as it thinks fit regarding the payment of the costs and expenses of and incidental to the disciplinary proceedings. Members have raised concern on whether the proposals in the Bill would give rise to increases in the costs and expenses for the investigation and disciplinary proceedings, which would in turn increase the costs to be borne by the CPA concerned. In particular, members note that under proposed new section 35A, HKSA may pay fees at such rates and such

expenses as the Council may deem fit to any members of a Disciplinary Committee for the performance of their duties or for any work done by them, and the fees and expenses shall form part of the costs and expenses of the disciplinary proceedings.

22. According to HKSA, the costs of the investigation and disciplinary proceedings mainly vary according to the complexity of cases. HKSA does not anticipate that the proposals in the Bill on their own would give rise to substantial increases in the costs of the proceedings. In particular, the proposals would not necessitate substantial increases in staffing support of HKSA for the investigation and disciplinary proceedings. According to the existing practice, HKSA would not recover the costs and expenses from CPAs who are not convicted. Moreover, the costs and expenses awarded against a convicted CPA only represent partial recovery, covering mainly legal bills and disbursements in rental of sound equipment for hearings, postage, copy charges etc. No recoveries are made on HKSA's internal staff costs or use of its own premises for hearings. HKSA has informed the Bills Committee that it has no intention to change the existing practice.

23. As regards the proposed provision (section 35A) to enable the payment of fees to members of Disciplinary Committees, HKSA advises that section 35A is modelled on and is intended to achieve consistency with existing section 42F relating to the payment of fees to members of Investigation Committees. Despite the existing provision for the payment of fees to members of Investigation Committees, such payment has never been made in the past; all the persons have offered their service free. HKSA has no plan to change the existing practice, though the possibility of making such payment in future cannot be ruled out. HKSA also advises that at present, it does not have any specific proposal about the criteria and rates for such payment. When the need for such payment arises, HKSA will probably make reference to the practices adopted by comparable bodies. As the fees will be paid out of the funds contributed by HKSA members, HKSA will be accountable to its members in regard to the relevant arrangements.

Proposed simplified disciplinary procedure

24. The Bills Committee notes that a new "consent order" procedure is provided under proposed section 35B, whereby the Disciplinary Committee may, without hearing, give notice to the complainant and the HKSA member concerned, stating the Committee's view as to the orders proposed to be made. Under the existing Ordinance, the Disciplinary Committee must hold a hearing or hearings before making any order. The orders made under the "consent order" procedure 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 HKSA or the complainant. If the complainant and the CPA consent to the proposed orders, such orders will be deemed to be 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.

25. According to HKSA, the objective of the new procedure is to reduce the costs and time required of the parties concerned. It would be adopted for cases involving minor breaches and in which there is no dispute on the relevant facts. On the rationale for the proposed arrangement to dissolve the existing Disciplinary Committee and to constitute a new Disciplinary Committee to deal with the complaint afresh, HKSA explains that the proposed arrangement is to avoid the subsequent disciplinary proceedings being prejudiced by the formed views of the existing Disciplinary Committee. Consideration of the complaint by a new Disciplinary Committee would be a fair arrangement for both the complainant and the CPA concerned. The Bills Committee also notes that the new Disciplinary Committee will not be allowed to use the "consent order" procedure to deal with the complaint, as it is stipulated in proposed section 35B(4)(d) that the new Committee "shall deal with the complaint afresh without regard to this section [section 35B]...".

Broadening of powers of the Council

Power to direct a CPA to give explanation

26. Proposed new section 18B empowers the Council to give directions either generally to CPAs or to any one or more CPA in connection with the discharge of any of its functions or duties or the exercise of any of its powers. Such direction may require the production of any document or information 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. Penalties may be imposed by the Council against a CPA for any failure to comply with its direction.

27. Members have raised concern that the power conferred on the Council to require a CPA to give an explanation of any act or omission of the CPA in relation to his conduct or practice as a CPA under section 18B(1)(c)(i) is too broad, as the power is not qualified by any specified grounds or circumstances. HKSA appreciates members' concern and agrees to amend section 18B(1)(c) to narrow the scope within which the Council may direct a CPA to give explanation. Under the revised proposed provision, the Council may direct a CPA to give explanation in respect of any conduct which appears to the Council to be unbecoming of a CPA, or which may affect the reputation, integrity and status of HKSA, or which may fall within section 34(1)(a)(iii) to (xii) of the Ordinance.

Power to suspend or cancel the practising certificate of a CPA

28. Under proposed section 30(8), the Council will have the power not to issue a practising certificate if the applicant has not complied with the HKSA'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. Proposed section 30(9) empowers the Council to suspend or cancel the practising certificate of a CPA if he fails to comply with any of the conditions imposed under proposed section 30(8). Concern has been raised as to whether the exercise of the power to cancel or suspend the practising certificate of a CPA will be subject to due process and sufficient safeguards for the CPA concerned. According to HKSA, the various requirements, including the requirements in respect of continuing professional development, for the issuance of a practising certificate are already specified in the Ordinance. CPAs are well-aware of these requirements. Moreover, the CPA concerned would be given the opportunity under section 30(9) to make representations before the Council suspends or cancels his practising certificate. The CPA aggrieved by the Council's decision may appeal against the decision to the Court of Appeal and the principles of natural justice would apply to the exercise of the power of the Council.

Immunity for the members of the Council

29. At present, the Ordinance is silent on the protection for members of the Council and its committees, the Registrar, officers and employees of HKSA in performing duties on behalf of the HKSA in good faith. According to HKSA, apart from practice review, investigation and disciplinary functions, HKSA is also involved in other statutory functions such as registration, issue of practicing certificates and conduct of examinations. There is a need to expand the immunity provision to the effect that no liability shall be incurred by any person in respect of any acts or omission by him in good faith in the performance of any functions under the Ordinance.

30. Proposed section 53 provides that members of the Council, the Registrar, or any officer or employee of HKSA 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.

31. In this connection, the Bills Committee notes that there is a similar provision for the Securities and Futures Commission. On the other hand, there is no express immunity provision for the Medical Council of Hong Kong, the Council of the Law Society of Hong Kong and the Council of the Hong Kong Bar Association. Taking into account that the proposed immunity provision only provides immunity in respect of personal liability (i.e. HKSA itself is not immune from suit for any misfeasance) and the immunity is subject to the "good faith" test, the Bills Committee accepts the proposed immunity provision.

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

32. Proposed amendments to section 3 of the Professional Accountants By-laws seek to enable the HKSA Council to accept casting of votes by electronic communication for the election of members of the Council. Members have stressed the importance of ascertaining the security and reliability of the relevant voting system before the implementation of voting by electronic communication. HKSA advises that HKSA attaches great importance to the design of the voting system to ensure security and reliability and hence a fair and proper election process, and assures members that adequate testing of the system would be conducted before the system is put to use. In this regard, the Administration has indicated that it is confident HKSA would resolve all technical issues in a prudent manner.

Progress of establishment of the proposed Independent Investigation Board

33. In response to members' concern about the progress of the establishment of the proposed Independent Investigation Board (IIB), HKSA advises that the Society envisages that the IIB's role would be to monitor and consider complaints of alleged accounting, auditing and/or ethical irregularities committed by auditors involving listed entities. Upon the establishment of the IIB, the role of the Investigation Committees of HKSA would be confined to investigations into alleged misconduct in respect of cases involving non-listed entities. The HKSA Council has decided to provide part of the funding for the operation of the IIB. The Administration advises that the drafting of the relevant legislative amendments is expected to be completed in the 2004-05 legislative session.

Committee Stage amendments

34. A full set of the Committee Stage Amendments (CSAs) to be moved by Dr Hon Eric LI is in **Appendix II**. The Bills Committee supports the CSAs.

Recommendation

35. The Bills Committee supports the proposal of Dr Hon Eric LI to resume the Second Reading debate on the Bill on 7 July 2004.

Advice sought

36. Members are invited to support the recommendation of the Bills Committee in paragraph 35 above.

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

Membership list

Chairman	Hon SIN Chung-kai
Members	Hon Kenneth TING Woo-shou, JP
	Hon Albert HO Chun-yan
	Dr Hon Eric LI Ka-cheung, GBS, JP
	Dr Hon David LI Kwok-po, GBS, JP
	Hon Jasper TSANG Yok-sing, GBS, JP
	Hon Emily LAU, JP
	Hon Abraham SHEK Lai-him, JP
	Hon Henry WU King-cheong, BBS, JP
	Hon Audrey EU Yuet-mee, SC, JP
	(Total : 10 members)
Clerk	Ms Anita SIT
Legal Adviser	Mr KAU Kin-wah

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>
10(b)(ii)	By deleting "21".
16	In the proposed section 18B(1)(c), by deleting from "--" up to and including "(ii)".
17	By deleting the clause and substituting - "17. Register of certified public accountants Section 22 is amended - (a) by adding - "(1C) The register may be maintained - (a) in a documentary form; or (b) by recording the information required under subsection (1A) otherwise than in a documentary form, so long as the information is capable of being reproduced in a legible form.";
	(b) by repealing subsection (3) and substituting -

"(3) For the purposes of enabling any member of the public to ascertain whether he is dealing with a certified public accountant, a certified public accountant (practising), a firm of certified public accountants (practising) or a corporate practice and to ascertain the particulars of registration of such person, the register or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form shall at all reasonable times be made available for public inspection without charge.";

(c) 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.".

22(e)(ii) By deleting "certified public accountant or accountants (practising)" and substituting "certified public accountant (practising) or certified public accountants (practising)".

25(a) By deleting "certified public accountant or accountants (practising)" and substituting "certified public accountant (practising) or certified public accountants (practising)".

- 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".
- 29(b) In the proposed section 30(4), by deleting "professional accountant" and substituting "public accountant".
- 37(c) (a) In the proposed section 35(1)(f), by deleting "(f)" and substituting "(i)".
(b) In the proposed section 35(1)(g), by deleting "(g)" and substituting "(ii)".
(c) In the proposed section 35(1)(h), by deleting "(h)" and substituting "(iii)".
- 54(7) By deleting paragraph (s).
- Schedule 1 By adding -
"5A. Notice of meetings of Institute
By-law 14 is amended by repealing "21 days" and substituting "28 days".".
- Schedule 1, section 23(7) By deleting "14,".
- Schedule 2 By adding -
"Travel Agents Regulations
15A. Forms

(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 By deleting section 20.

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".