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**Paper for the House Committee meeting
on 24 June 2011**

**Report of the Subcommittee on
Professional Accountants (Amendment) Bylaw 2011**

Purpose

This paper reports on the deliberations of the Subcommittee on Professional Accountants (Amendment) Bylaw 2011 (L.N. 70 of 2011) ("the 2011 Amendment Bylaw").

Background

2. The Hong Kong Institute of Certified Public Accountants ("HKICPA") is a professional body established under the Professional Accountants Ordinance (Cap. 50) ("the Ordinance"), with a wide range of powers and responsibilities conferred upon it for the registration and training of certified public accountants, maintenance of accounting, auditing and assurance, and ethical standards, and regulation of the practice of the accountancy profession. Under section 8(1) of the Ordinance, HKICPA may, subject to the approval of the Chief Executive in Council, make bylaws on specified matters.

3. The Council of HKICPA ("HKICPA Council") is the governing body of HKICPA and comprised up to 23 elected, appointed and co-opted members. Bylaw 8 of the Professional Accountants By-laws (Cap. 50 sub. leg. A) governs voting at meetings of HKICPA Council. The current bylaw 8(3), which was put in place through the 2010 Amendment Bylaw and came into effect on 1 July 2010, enables members of HKICPA Council, who are unable to physically attend HKICPA Council meeting, to participate in the meeting and vote by telephone, video conferencing or

other electronic means. However, bylaw 8(3) does not specifically cater for voting by ballot.

4. According to HKICPA, since the 2010 Amendment Bylaw has come into effect, it has put in place a secure online system which has the audio and visual capabilities to enable the remote participation by HKICPA Council members in the meeting, and voting by ballot by all HKICPA Council members who are present at the meeting (including those who are physically present and those who participate in the meeting through electronic means). The system will facilitate, in particular, the annual election of President and Vice Presidents by HKICPA Council members, which as provided in bylaw 12(4), shall be determined by ballot.

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5. The 2011 Amendment Bylaw is made by HKICPA under section 8 of the Ordinance. The purpose is to enable members of HKICPA Council, who are physically present at a Council meeting or who participate through electronic means, to vote by ballot at the meeting. The newly added bylaw 8(4) provides that voting on any question is by a show of hands, unless a ballot is demanded by a majority vote of the members present and voting. The newly added bylaw 8(5) provides that, for the purpose of bylaw 8(4), the reference to a show of hands in relation to a member of the Council who is regarded as being present at a meeting of the Council under bylaw 8(3) (which allows members to participate in a Council meeting by electronic means), means casting a vote orally.

6. The Amendment Bylaw was tabled in the Legislative Council on 18 May 2011 and will come into operation on 1 August 2011.

The Subcommittee

7. At the meeting of the House Committee on 20 May 2011, a subcommittee was formed to study the 2011 Amendment Bylaw. Under the chairmanship of Hon James TO Kun-sun, the Subcommittee has held two meetings. The membership list of the Subcommittee is in **Appendix I**.

8. To allow more time for the Subcommittee to study the 2011 Amendment Bylaw, the scrutiny period has been extended to 6 July 2011 by a resolution of the Legislative Council passed on 8 June 2011.

Deliberations of the Subcommittee

9. Members of the Subcommittee have discussed with representatives of HKICPA and the Administration a number of issues relating to the 2011 Amendment Bylaw, including the purpose, scope and application of the amendment bylaw, the conduct of voting at meetings of HKICPA Council, ways to ensure security of the voting process, as well as means for HKICPA Council to enhance transparency in its operation and work. The deliberations are set out in the ensuing paragraphs.

Purpose, scope and application of the 2011 Amendment Bylaw

10. Noting that the existing bylaw 8(3) has already enabled members of HKICPA Council to attend meetings and vote by telephone, video conferencing or other electronic means, members of the Subcommittee have enquired about the purpose of the 2011 Amendment Bylaw. HKICPA has explained that legislative amendment was made in 2010 to allow members to attend at HKICPA Council meetings through electronic means. While the existing bylaw 8(3) can allow members of HKICPA Council to attend meetings and vote by electronic means, it has made no reference to voting by ballot. The effect of the 2011 Amendment Bylaw is to enable HKICPA Council members, who cannot physically attend a meeting of HKICPA Council but can attend by electronic means, to be able to vote by ballot via a secure on-line voting system, i.e. Webex system.

11. While the Subcommittee considers that HKICPA has taken an innovative step in enabling its Council members to participate in meetings through electronic means, it has enquired about the rationale behind as they note that participation in meetings through electronic means is not common among organizations in Hong Kong. In this regard, the Subcommittee has requested the Administration to provide information on the situations of other local self-regulatory professional bodies. The Administration has advised that other local self-regulatory professional bodies such as Hong Kong Bar Association, The Law Society of Hong Kong, The Hong Kong Medical Association, The Hong Kong Institution of Engineers, The Hong Kong Institute of Architects, and The Hong Kong Institute of Surveyors, currently do not provide for their members to participate at meetings or vote on matters through electronic means.

12. HKICPA has advised that it is modern commercial practice internationally to enable participation in meetings through electronic means and e-voting is provided for in various countries around the world. The European Commission has already passed directives on shareholders' rights

in 2007, which requires European Union member countries to allow for e-participation at meetings and e-voting, and the United Kingdom has implemented this through changes to the Companies Act 2006. In addition, a bill introduced into the New Zealand Parliament will allow companies to introduce e-voting systems. HKICPA has pointed out that allowing members to participate in its Council meetings through electronic means has facilitated the smooth conduct of business of HKICPA Council, as members who are not available to physically attend meetings owing to travel and other commitments can also contribute and provide inputs. The arrangements, which reflect present-day needs, have provided greater flexibility to HKICPA Council members.

13. While the Subcommittee appreciates the need for HKICPA to follow the global trend in allowing participation in meetings through electronic means and the benefit of participation of HKICPA Council members who are not physically present at meetings, Subcommittee members have expressed a number of concerns on the arrangements. Some members are concerned that enabling electronic participation in meetings may discourage physical attendance at meetings. In this regard, some members have suggested HKICPA stipulate circumstances under which members of HKICPA Council may use electronic means to participate and vote in meetings, such as members suffering from serious sickness and thus unable to attend meetings physically.

14. Upon request by the Subcommittee, HKICPA has provided members' attendance at meetings of its Council in terms of physically present and those participating remotely through electronic means. Subcommittee members have noted that there was little change in the attendance of HKICPA Council members in terms of those physically present and those attended through electronic means before and after the 2010 bylaw amendment. HKICPA has further advised that its Council meetings usually have a high physical attendance rate. Hence, HKICPA does not believe that the ability for members to participate and vote remotely in HKICPA Council meetings will have negative impact on members' physical attendance at meetings, or in any way encourage absenteeism. On the Subcommittee's suggestion for stipulating the requirements for HKICPA Council members to use electronic means to participate in meetings, HKICPA has reiterated that under the existing bylaw 8(3), a HKICPA Council member is regarded as being present at a Council meeting if he participates in a meeting by telephone, video conferencing or other electronic means and others are able to hear him and he is able to hear others. Electronic mode of presence is given equal status to physical presence under the law. It will go against the principle

of equity if HKICPA stipulates limits on one mode of presence and not on the other. Hence, HKICPA considers that there is no need to stipulate further conditions for using electronic means to participate in HKICPA Council meetings.

15. Regarding some members' enquiries about whether the 2011 Amendment Bylaw would address concerns about alleged pressure exerted by a large accountant firm on its employees to vote for certain candidates in the election of members to HKICPA Council as revealed in a newspaper report in December 2010, HKICPA has clarified that the present amendment only concerned with voting in a HKICPA Council meeting, whereas the newspaper report referred to by the Subcommittee was concerned with the general election of Council members by the 32 000 HKICPA members. HKICPA explained that the said allegation had been reviewed by HKICPA's Governance Review Task Force, which was set up by HKICPA Council to review various governance matters and is chaired by a HKICPA Council member who is a lay member appointed by the Government. The Governance Review Task Force had considered the matter and found no evidence to conclude that there was any undue influence exerted by the employer.

Fairness and security of the voting process at meetings of HKICPA Council

16. The Subcommittee has noted that members participating in HKICPA Council meetings at remote locations and vote through electronic means will be subject to a less controlled environment. Some members have expressed concern about the difficulty in ensuring the confidentiality of the meetings, as well as fairness and security of the voting process on the part of members participating at remote locations. In particular, the Subcommittee has expressed concern about ways to safeguard against possible coercion on these HKICPA Council members by third parties during the meeting and when voting.

17. HKICPA has advised that every member of HKICPA Council is required to sign an undertaking each year to maintain confidentiality of the proceedings of Council meetings. After the passage of the 2011 Amendment Bylaw, the undertaking will be updated to include provisions for HKICPA Council members attending meetings and voting by electronic means, under which members will be required to undertake that they would attend the meeting in a private and secured environment without the presence of any other person and would maintain confidentiality of the meeting proceedings at all times. Moreover, before conducting the ballot voting, the convenors will reaffirm with these HKICPA Council members

that the above conditions are met. HKICPA has stressed that breaching of the confidentiality undertaking concerns the integrity of a member and is a matter subject to disciplinary proceedings of HKICPA.

18. To facilitate the ballot voting arrangement, HKICPA has purchased Webex system from Cisco, which is one of the world's biggest technology corporations focusing on networking, communications and security products and solutions. Webex is a secure online collaboration platform built on the global secure network (MediaTone), and provides applications for online meetings and events through web conferencing and video-conferencing with voting features. The system can put everyone on the same page even if some are elsewhere, and everyone can be heard and seen by others through live audio conferencing and webcam video streaming, thus minimizing the risk of any undue influence from others, whoever they may be. The system allows every member to vote and the votes are anonymous. Webex online meetings are delivered over a highly secure, scalable and available network (the Cisco Collaboration Cloud). It is a robust private network designed specifically for large-scale and real-time global web collaboration. A variety of security options, such as meeting password protection, are available to control and to monitor who attends the meeting, and to ensure all the data are safe. HKICPA has advised that the Registrar of the Institute, as the Secretary to the Council, together with the external legal adviser of HKICPA, will conduct the ballot voting.

Means for enhancing transparency and governance of HKICPA Council

19. While respecting that HKICPA Council, being the governing body of a self-regulatory professional body, has autonomy in affairs relating to its operation and internal matters, the Subcommittee stressed that it was important for HKICPA Council to enhance its transparency in order to foster public confidence in its work and governance. In this respect, members including Hon James TO and Hon Emily LAU have made some suggestions/views for consideration by HKICPA Council, which are detailed below.

Election arrangements of President and Vice Presidents of HKICPA Council

20. Hon James TO and Hon Emily LAU consider that the election of President and Vice Presidents of HKICPA Council is an important matter underpinning the public confidence in the governance of HKICPA Council. To prevent the situation of a large number of members attending the

election meeting remotely and vote by ballot through electronic means, thereby giving rise to concerns or queries about the integrity and credibility of the election, Hon James TO strongly suggests that HKICPA should consider setting a limit on the number of members who may participate and vote in the election through electronic means. The effect will be that if the limit is exceeded, the election will be deferred to another date.

21. HKICPA Council has considered Hon James TO's suggestion. Given that the 2011 Amendment Bylaw is very limited in scope and application, and relates entirely to HKICPA's internal process and has already gone through a proper due process of unanimous approval by HKICPA Council as well as by HKICPA members at HKICPA's Annual General Meeting ("AGM"), HKICPA Council members have expressed reservation about further amending the Amendment Bylaw unless there is a fatal flaw which necessitates modification. Nonetheless, HKICPA has undertaken that its Council will ask the Governance Review Task Force to consider the suggestion and make recommendations in that respect.

22. On the procedures for the election of President and Vice Presidents of HKICPA Council, Subcommittee members have suggested HKICPA review the present arrangements for holding election platform for candidates, with a view to enabling more interactive participation by the various candidates, including allowing debate among candidates and question and answer sessions. Moreover, the election procedures should allow disclosure of the number of votes received by each candidate. HKICPA has agreed to reflect these views/suggestions for consideration of its Governance Review Task Force.

Conduct of voting by HKICPA Council

23. HKICPA has explained that matters for consideration by HKICPA Council are usually deliberated and decided upon by members without resorting to voting. If voting is required on a matter, it will be conducted by a show of hands (except the election of President and Vice Presidents under which voting is conducted by ballot as required under the existing bylaw 12(4)). In order to maintain the integrity of the decisions of HKICPA Council and promote co-operation among the Council members, the normal practice is to put down the number of votes for or against a decision, or abstain from voting, without recording the names of members voting and their voting positions unless requested by individual members that their respective voting positions and views on the matter be recorded. If a member requests to record the individual voting position of each member and who abstain from voting (i.e. to claim a division on the votes),

this would be a matter for the decision of HKICPA Council. In accordance with the existing bylaw 8(1), such matter on a division on the votes may proceed with the agreement by a majority of the members. As for members' request for voting by ballot, HKICPA has advised that the request, which seldom arises, would be acceded to with agreement by the majority of members as provided in the amendment bylaw 8(4). HKICPA Council considers that in order to enhance transparency, voting by ballot should not be encouraged and hence the method should only be used with the majority of Council members' approval. HKICPA has reiterated that the existing bylaw 12(4) has already provided that the election of President and Vice Presidents shall be determined by ballot. Therefore, the requirement for the majority members of HKICPA Council to agree on voting by ballot in the amendment bylaw 8(4) only applies to matters other than the said election.

24. Hon Emily LAU considers that it is a high threshold to require agreement by the majority of members for claiming a division on the votes, and conducting ballot voting. She suggests that HKICPA's Governance Review Task Force should consider relaxing the requirement in this regard so as to provide greater flexibility to members of HKICPA Council.

25. On the requirement for majority approval of HKICPA Council to adopt voting by ballot as stipulated in the amendment bylaw 8(4), HKICPA has pointed out that as the amendment has already been approved by both HKICPA Council and members of HKICPA at its AGM on 17 December 2010, there is reservation about making further amendments. Nonetheless, HKICPA Council would through its Governance Review Task Force consider Hon Emily's suggestions made in paragraph 24.

Transparency of the work of HKICPA Council

26. The Subcommittee has noted that meetings of HKICPA Council are held closed-door and records of meetings are kept confidential. Subcommittee members have enquired how HKICPA members and the public can learn about the deliberations of its Council and the decisions. They also suggest HKICPA Council to explore ways and measures to further enhance transparency in its operation, such as increasing the disclosure of deliberations of HKICPA Council.

27. HKICPA has advised that its Council attaches great importance in enhancing its transparency and governance. The public can access the website of HKICPA which provides a lot of information on the work of the Institute and its Council. HKICPA Council also sends weekly e-news to

HKICPA members to apprise them on important matters and decisions made by HKICPA Council. HKICPA members will also receive e-news from the Chief Executive and Registrar, as well as messages from the HKICPA President in the Institute's monthly magazine. Furthermore, the Governance Review Task Force is considering proposals to further enhance transparency in the operation and work of HKICPA Council, and will take note of the Subcommittee's views in this respect.

28. At the request of the Subcommittee, HKICPA has undertaken to follow up on the above views and suggestions, and, where appropriate, to inform the Panel on Financial Affairs of any progress in about a year's time.

Proposed amendments

Textual amendment on the amendment bylaw 8(5)

29. The Subcommittee has noted that the formulation of bylaw 8(5) may be interpreted as requiring all HKICPA Council members who participate in meetings by electronic means to cast their votes orally for voting on any question by a show of hands. This would mean that HKICPA Council members participating in meetings by electronic means are not allowed to vote by visually showing his hand by electronic means. In the light of members' views, the Administration has undertaken to follow up with HKICPA to make a technical amendment to the effect that, when voting by a show of hands, HKICPA Council members voting from a remote location can cast their votes orally or by other means. The draft amendment proposed by the Administration in **Appendix II** has been circulated to the Subcommittee.

30. The Subcommittee will not move any amendments to the 2011 Amendment Bylaw.

Advice sought

31. Members are requested to note the deliberations of the Subcommittee.

**Subcommittee on
Professional Accountants (Amendment) Bylaw 2011**

Membership list

Chairman Hon James TO Kun-sun

Members Dr Hon Philip WONG Yu-hong, GBS
 Hon Emily LAU Wai-hing, JP
 Hon Audrey EU Yuet-mee, SC, JP
 Hon Paul CHAN Mo-po, MH, JP

(Total: 5 members)

Clerk Ms Connie SZETO

Legal Adviser Miss Evelyn LEE

Date 1 June 2011

Professional Accountants (Amendment) By-laws 2011

(Made by the Hong Kong Institute of Certified Public Accountants under section 8 of the Professional Accountants Ordinance (Cap. 50) with the approval of the Chief Executive in Council)

1. Commencement

These By-laws come into operation on 1 August 2011.

2. Professional Accountants By-laws amended

The Professional Accountant By-laws (Cap. 50 sub. leg. A) are amended as set out in section 3.

3. By-law 8 amended (Voting at meetings of Council)

After by-law 8(3)—

Add

“(4) Voting on any question is by a show of hands, unless a ballot is demanded by a majority vote of the members present and voting.

(5) For the purposes of paragraph (4), the reference to a show of hands, in relation to a member of the Council who is regarded as being present at a meeting of the Council under paragraph (3), ~~means~~ includes casting a vote orally.”

Made by the Hong Kong Institute of Certified Public Accountants
on 17 December 2010.

President,
Hong Kong Institute of Certified
Public Accountants

Certified by the President of the Hong Kong Institute of Certified
Public Accountants on 17 December 2010.

President,
Hong Kong Institute of Certified
Public Accountants

Approved by the Chief Executive in Council on 2011.

Clerk to the Executive Council

COUNCIL CHAMBER

2011

Explanatory Note

This Bylaw amends by-law 8 of the Professional Accountants By-laws (Cap. 50 sub. leg. A) to enable members of the Council (including those who participate in a meeting by telephone, video conferencing or other electronic means) of the Hong Kong Institute of Certified Public Accountants to vote by ballot at a Council meeting.