

LEGISLATIVE COUNCIL BRIEF

Professional Accountants Ordinance (Chapter 50)

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BYLAW 2011

INTRODUCTION

A At the meeting of the Executive Council on 3 May 2011, the Council ADVISED and the Chief Executive ORDERED that the Professional Accountants (Amendment) Bylaw 2011, at **Annex A**, should be made under section 8 of the Professional Accountants Ordinance.

JUSTIFICATIONS

2. The Amendment Bylaw seeks to provide for voting by ballot by members of the Council of the Hong Kong Institute of Certified Public Accountants (“the Institute”), including those who participate in a meeting by telephone, video conferencing or other electronic means, i.e., if the majority of members of the Council of the Institute (“Council”) present and voting so demand, the Council may vote by ballot instead of by a show of hands.

Bylaw 8: Voting at meetings of Council

3. In 2010, the Bylaws were amended to enable, amongst others, members of the Council to attend meetings and vote by telephone, video conferencing or other electronic means. The 2010 amendment serves to facilitate the smooth conduct of Council business by allowing the participation and inputs of members who are not available to physically attend the Council meeting owing to travel and other commitments. However, the amendment did not specifically cater for voting by ballot.

4. Since the 2010 amendment has come into effect, the Institute has put in place a secure online system to enable both (a) the remote participation by Council members in the meeting made possible by the audio and visual capabilities of the system; and (b) voting by ballot by all 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 would facilitate, in particular, the annual election of President and Vice Presidents by Council members.

5. According to the Institute, the system is a highly secure internet platform operated jointly by the Registrar of the Institute, as the Secretary to the Council, together with the external legal advisor of the Institute. The platform is equipped with audio-visual capabilities as well as an electronic voting system which allow all members to see and hear each other throughout the meeting even if some of them are not physically present at the meeting, and to vote anonymously in a secure manner. While the electronic voting system is not prescribed in the bylaw as the only means for the conduct of voting by ballot, the Institute advises that it would be the preferred method in voting which involve remote participants.

6. The proposed arrangement will enable the Institute to benefit from the fuller participation of those Council members who cannot be physically present at the meeting. The arrangement will provide the necessary flexibility to Council members while ensuring the fairness and security of the voting process.

Making of the Amendment Bylaw

7. In accordance with section 8(3) of the Ordinance, the Institute sent notices of the annual general meeting (“AGM”) and the proposed Amendment Bylaw to its members not less than 21 days before its AGM on 17 December 2010 and members present at the AGM approved it unanimously. The Amendment Bylaw made by the Institute has been duly certified by its President in accordance with section 8(2) of the Ordinance.

B A copy of section 8 of the Ordinance is at **Annex B**.

THE AMENDMENT BYLAW

8. **Section 3** amends bylaw 8 by adding two new paragraphs (4) and (5) to enable the Institute's Council members who participate in a meeting by telephone, video conferencing or other electronic means to vote by ballot at a Council meeting.

C 9. The relevant existing provision of bylaw 8 is at **Annex C**.

LEGISLATIVE TIMETABLE

10. Subject to Members' approval of the Amendment Bylaw, the legislative timetable will be as follows –

Publication in the Gazette	13 May 2011
Tabling before the Legislative Council	18 May 2011
Commencement of the Amendment Bylaw	1 August 2011

IMPLICATIONS OF THE AMENDMENT BYLAW

11. The Amendment Bylaw is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the current binding effect of the Ordinance. It has no financial, economic, civil service, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

12. Members of the Institute did not raise any negative comments on the proposed amendments which were approved at the Institute's AGM on 17 December 2010 unanimously. The Amendment Bylaw only concerns administrative matters of the Institute. The general public is unlikely to be affected or interested.

ENQUIRIES

13. Enquiries on this brief should be directed to Miss Amy Yeung, Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2527 3102 or Ms Winnie Cheung, Chief Executive and Registrar of the Institute, at 2287 7032.

Financial Services and the Treasury Bureau
11 May 2011

LEGISLATIVE COUNCIL BRIEF

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BYLAW 2011

Annex A	-	Professional Accountants (Amendment) Bylaw 2011
Annex B	-	Section 8 of the Professional Accountants Ordinance (Chapter 50)
Annex C	-	Existing provisions of Bylaw 8

Professional Accountants (Amendment) Bylaw 2011

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

1. Commencement

This Bylaw comes into operation on 1 August 2011.

2. Professional Accountants By-laws amended

The Professional Accountants 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 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

Professional Accountants (Amendment) Bylaw 2011

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Approved by the Chief Executive in Council on 2011.

Clerk to the Executive Council

COUNCIL CHAMBER

2011

Professional Accountants (Amendment) Bylaw 2011

**Explanatory Note
Paragraph 1**

4

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.

Chapter:	50	Title:	PROFESSIONAL ACCOUNTANTS ORDINANCE	Gazette Number:	23 of 2004
Section:	8	Heading:	Power of Institute to make by-laws	Version Date:	08/09/2004

(1) The Institute may, subject to the approval of the Chief Executive in Council, make by-laws- (Amended 31 of 1999 s. 3; 23 of 2004 s. 54)

- (a) regulating the practice of accountancy by professional accountants in Hong Kong;
- (b) (Repealed 22 of 1977 s. 3)
- (c) regulating meetings of the Institute and the Council;
- (d) governing the registration, training and education of students; (Amended 22 of 1977 s. 3)
- (e) governing the discipline of students;
- (f) empowering the Council to make rules prescribing examinations of the Institute, the fees payable therefor and all matters incidental to the holding thereof including exemptions or concessions which may be granted in respect of the examinations; (Amended 22 of 1977 s. 3)
- (g) regulating the conditions on which examiners shall be engaged;
- (h) regulating the appointment of an auditor;
- (i) providing for the use and custody of the common seal of the Institute;
- (j) providing for the custody, investment and expenditure of the funds and the management of property of the Institute; (Amended 23 of 2004 s. 54)
- (k) (Repealed 14 of 1985 s. 2)
- (l) specifying the designations for certified public accountants and the initials by which certified public accountants may be known; (Amended 23 of 2004 s. 54)
- (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; (Added 23 of 2004 s. 8)
- (m) (Repealed 22 of 1977 s. 3)
- (n) regulating the nomination and election of elected members of the Council;
- (o) conferring on members of the Council and employees and auditors of the Institute a right of indemnity against the Institute for actions brought against them for things done by them in the execution of the Ordinance; (Amended 23 of 2004 s. 54)
- (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; (Added 23 of 2004 s. 8)
- (p) prescribing anything which is to be or may be prescribed by the Ordinance;
- (q) generally for the better carrying into effect of the purposes of this Ordinance and for the furtherance of the objects of the Institute.

(2) A copy of any by-laws made by the Institute shall, as soon as practicable after the making thereof, be duly certified by the President and transmitted by him for the approval of the Chief Executive in Council. (Amended L.N. 137 of 1981; 31 of 1999 s. 3)

(3) A by-law under subsection (1) may be made only by a majority of two-thirds of the certified public accountants present in person or by proxy and voting at a general meeting of the Institute convened for the purpose of making the by-laws. Notice of such meeting and of the by-laws to

be proposed thereat shall be sent to every certified public accountant not less than 21 days before the date fixed for the meeting, but the non-receipt of such a notice by any certified public accountant shall not invalidate the proceedings thereat. (Amended 22 of 1977 s. 3; 23 of 2004 s. 8)

(4) (Repealed 32 of 2000 s. 48)

(Amended 23 of 2004 s. 54)

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Chapter: 50A Title: PROFESSIONAL Gazette Number: L.N. 44 of 2010
Bylaw: 8 Heading: ACCOUNTANTS BY-LAWS
Voting at meetings of Council Version Date: 01/07/2010

- (1) Subject to section 4(6) of the Ordinance, a question arising at a meeting of the Council shall be decided by a majority vote of the members present and voting.
- (2) At a meeting of the Council, each member present shall have one vote on any question before the Council and, in the event of an equality of votes, the chairman shall have a second or casting vote.
- (3) A member of the Council is to be regarded as being present at a meeting of the Council if he participates in the meeting by telephone, video conferencing or other electronic means, provided he is able to hear all the other members present at the meeting and all of them are able to hear him. (L.N. 44 of 2010)