

立法會
Legislative Council

LC Paper No. CB(1)1785/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/12

Bills Committee on Professional Accountants (Amendment) Bill 2013

First meeting on
Tuesday, 9 July 2013, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex

- Members present** : Hon Charles Peter MOK (Chairman)
Hon Kenneth LEUNG
Dr Hon Elizabeth QUAT, JP
- Members absent** : Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
- Public officer attending** : Mr Maurice LOO
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 4
- Attendance by invitation** : The Hong Kong Institute of Certified Public Accountants

Mr Raphael DING
Chief Executive and Registrar

Mr Johnny CHAN
General Counsel

Ms Linda BIEK
Director of Compliance

Ms Tracy WONG
Director of Admission

Ms Jessie NG
Deputy Director of Compliance

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Mr Hugo CHIU
Council Secretary (1)4

Ms Sharon CHAN
Legislative Assistant(1)4

I Election of Chairman

Mr Charles MOK, the member with the highest precedence among those present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr Charles MOK was nominated by Mr Kenneth LEUNG and the nomination was seconded by Dr Elizabeth QUAT. Mr Charles MOK accepted the nomination. There being no other nomination, Mr Charles MOK was elected Chairman of the Bills Committee.

3. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Hong Kong Institute of Certified Public Accountants and the Administration

(LC Paper No. CB(1)523/12-13(01) — The Bill

LC Paper No. CB(1)1449/12-13(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)

LC Paper No. LS51/12-13 — Legal Service Division Report

LC Paper No. CB(1)1449/12-13(02) — Background brief on Professional Accountants (Amendment) Bill 2013 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)1449/12-13(03) — Letter dated 8 May 2013 from Legal Service Division to Hon Kenneth LEUNG)

Discussion

4. The Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

5. The Administration was requested to provide information on:
- (a) the Department of Justice's policy or practice on the modernization of legislation regarding the replacement of the word "shall" by the word "must" in existing ordinances; and
 - (b) when such amendment would be made, for instance whether the amendment would apply to the relevant provisions covered by an amendment bill only or other provisions of the ordinance even if they were not covered by the bill.

(Post-meeting note: The Administration's written response was circulated to members vide LC Paper No. CB(1)1614/12-13(02) on 1 August 2013.)

Invitation of written submissions from the public

6. Members agreed to post a notice on the Legislative Council ("LegCo") website and write to the 18 District Councils ("DCs") to invite written submissions from the public and DCs on the Bill.

(Post-meeting note: The notice was posted on LegCo website and letters were sent to DCs on 10 July 2013 to invite written submissions.)

III Any other business

Date of next meeting and way forward

7. The Chairman concluded that the Bills Committee had completed scrutiny of the Bill. Members agreed that written submissions, if any, from the public and DCs would be circulated to members. The Bills Committee would decide on the need to hold a further meeting having regard to the views received from the public and DCs. Members also agreed that the Chairman of the Bills Committee would move Committee Stage amendments ("CSAs") on behalf of the Committee on the proposed amendments raised by the Legal Adviser to the Bills Committee. The proposed CSAs would be circulated to members for consideration in due course. Subject to no further issues from members, the Chairman would report the Bills Committee's deliberations to the House Committee upon commencement of the 2013-2014 legislative session for resumption of the Second Reading debate on the Bill in early 2013-2014 legislative session.

(Post-meeting note: The draft CSAs were circulated to members vide LC Paper No. CB(1)1564/12-13(01) on 18 July 2013.)

8. There being no other business, the meeting ended at 3:07 pm.

Council Business Division 1
Legislative Council Secretariat
12 September 2013

**Proceedings of the
Bills Committee on Professional Accountants (Amendment) Bill 2013
First meeting on Tuesday, 9 July 2013, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000115 – 000255	Mr Charles MOK Mr Kenneth LEUNG Dr Elizabeth QUAT	Election of Chairman	
000256 – 000342	Chairman	Introductory remark	
000343 – 000754	Mr Kenneth LEUNG	<p>Briefing of the Bill by Mr Kenneth LEUNG. He explained that the Bill sought to amend the Professional Accountants Ordinance (Cap. 50) ("PAO") to:</p> <p>(a) permit a sole certified public accountant (practising) to incorporate a company with only one shareholder and to register the company as a corporate practice;</p> <p>(b) prohibit the use of certain misleading descriptions by a body corporate; and</p> <p>(c) make related technical and drafting amendments.</p>	
000755 – 000931	Administration	The Administration remarked that it supported the Bill in principle.	
000932 – 001312	Chairman The Hong Kong Institute of Certified Public Accountants ("HKICPA")	<p>Noting that no public consultation had been conducted on the Bill, the Chairman enquired whether the Hong Kong Institute of Certified Public Accountants ("HKICPA") had consulted its members on the legislative proposals in the Bill, and whether the proposals would have impact on the public.</p> <p>HKICPA's replies as follows:</p> <p>(a) HKICPA had consulted its members on the legislative proposals incorporated in the Bill. The proposals included in the Bill were the same as those contained in the Professional Accountants (Amendment) Bill 2012 ("the 2012 Bill") put forward by Mr CHAN Mo-po during the Fourth Legislative Council ("LegCo") except that</p>	

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		<p>a few textual amendments had been added. The 2012 Bill, which was gazetted on 4 May 2012, was placed on the Agenda of Council meetings for First Reading and Second Reading but the proceedings were not dealt with before the Fourth LegCo stood prorogued. HKICPA had recently informed its members about the new textual amendments included in the Bill.</p> <p>(b) The proposed amendment of permitting a sole certified public accountant (practising) to incorporate a company with only one shareholder and to register the company as a corporate practice would have no impact on the public. It had already been the existing arrangement to allow a sole certified public accountant (practising) to incorporate as a company with a nominee shareholder and register the company as a corporate practice. The position that the sole certified public accountant (practising) taking up unlimited liability for the company would remain unchanged.</p> <p>(c) Currently under PAO, corporate practices are allowed to use the description "certified public accountant" in their names. As there were cases where some companies not being corporate practices registered with HKICPA had abused this arrangement and used the description "certified public accountant", the initials "CPA" or the characters "會計師" in their names with an attempt to mislead the public into believing that they were practice units under PAO and qualified to provide auditing services, the amendment prohibiting the use of such misleading descriptions by a body corporate in its name would help plug the loophole and protect the interest of the public.</p> <p>The Chairman enquired whether accounting companies currently using the description "certified public accountant", the initials "CPA" or the characters "會計師" in their names had to change their names after enactment of the Bill.</p>	

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		HKICPA responded that after discussion with the Companies Registry ("CR") a few years ago, companies not being corporate practices registered with HKICPA under PAO were no longer allowed to register their names with CR using the above description/initials/characters. The Bill sought to specify such prohibitions explicitly in PAO.	
001313 – 001659	Chairman Mr Kenneth LEUNG Clerk Dr Elizabeth QUAT	Members agreed that the Bills Committee would invite public views on the Bill by: (a) issuing letters to 18 District Councils to invite written submissions; and (b) placing an invitation for views on the website of LegCo.	
<u>Clause by Clause Examination of the Bill</u>			
001700 – 002226	HKICPA ALA6 Mr Kenneth LEUNG	Briefing by HKICPA on the details of the clauses. Part 1 Preliminary <u>Clause 1 - Short title and commencement</u> Part 2 Amendments to Professional Accountants Ordinance <u>Clause 2 – Professional Accountants Ordinance amended</u> Members raised no question on clauses 1 and 2. <u>Clause 3 – Section 28D amended (qualification for registration of company as corporate practice)</u> ALA6 pointed out that Part 16 of Schedule 10 (which contained consequential and related amendments to other ordinances and subsidiary legislation) to the new Companies Ordinance ("the new CO") had amended section 28D(1) of PAO. While the new CO was passed by LegCo on 12 July 2012, it had not yet come into operation. As section 28D(2)(a) of PAO had	

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		<p>made reference to "subsection (1)", it would be necessary to make appropriate amendment to section 28D(2)(a) of PAO upon commencement of that Part 16. Appropriate amendment to section 28D(2)(a) of PAO could be made by moving a Committee Stage amendment ("CSA") to clause 3. Details of her views were set out in her letter dated 8 May 2013 addressed to Hon Kenneth LEUNG (LC Paper No. CB(1)1449/12-13(03)).</p> <p>Mr LEUNG remarked that ALA6's views had been conveyed to HKICPA, and the latter had no objection to the suggested amendment.</p> <p>The Administration said that it was the Administration's plan to bring the new CO into operation in the first quarter of 2014. As such, it was likely that the Bill would commence ahead of the new CO. Since there were already plans for introducing a notice to update the list of consequential and related amendments to other ordinances pursuant to the new CO by the end of 2013, the amendment suggested by ALA6 could be taken forward through such an exercise. Members agreed that the amendment suggested by ALA6 be taken forward by the Administration in the course of updating the list of consequential amendments arising from the new CO.</p>	
002227 – 002522	HKICPA Mr Kenneth LEUNG	<p><u>Clause 3 – Section 28D amended (qualification for registration of company as corporate practice)</u> (con't)</p> <p>At Mr LEUNG's request, the Administration agreed to provide information on:</p> <p>(a) the Department of Justice's policy or practice on the modernization of legislation regarding the replacement of the word "shall" by the word "must" in existing ordinances; and</p> <p>(b) when such amendment would be made, for instance whether the amendment would apply to the relevant provisions covered by an amendment bill only or other provisions of the ordinance even if they were not covered by the bill.</p>	The Administration to take action as per paragraph 5 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
002523 – 002723	HKICPA ALA6	<p><u>Clause 3 – Section 28D amended (qualification for registration of company as corporate practice)</u> (con't)</p> <p>ALA6 raised whether the phrase "the requirements of subparagraph (i)" in section 28D(3)(c)(ii)(A) of PAO should be substituted by "the requirement of subparagraph (i)" in view of the proposed amendments set out in clause 3(4) and (5).</p> <p>Members and HKICPA agreed to refine the drafting of section 28D(3)(c)(ii)(A) of PAO as suggested by ALA6.</p>	
002724 – 003249	HKICPA ALA6 Mr Kenneth LEUNG	<p><u>Clause 4 – Section 42 amended (offences and penalties)</u></p> <p>ALA6 pointed out that clause 4(1) proposed to replace "company" in section 42(1)(ha) of PAO by "body corporate", should amendments be made to "company" as contained in sections 42(1)(ii) and 42(4)(a) of PAO as well.</p> <p>Members and HKICPA agreed to make the refinements in sections 42(1)(ii) and 42(4)(a) of PAO as suggested by ALA6.</p>	
003250 – 003520	HKICPA	<p>Part 3</p> <p>Amendment to Professional Accountants By-laws</p> <p><u>Clause 5 – Professional Accountants By-laws amended</u></p> <p><u>Clause 6 – By-law 29 amended (restrictions on name in which practice may be carried on)</u></p> <p>Part 4</p> <p>Transitional Provision</p> <p><u>Clause 7 – Transitional provision</u></p> <p>Members raised no question on clauses 5 to 7.</p>	

Time Marker	Speaker	Subject(s)	Action Required
003521 – 003552	Chairman Mr Kenneth LEUNG	Members decided that the Chairman of the Bills Committee would move CSAs on behalf of the Committee on the above amendments agreed by members. The CSAs would be circulated for members' consideration in due course.	
003553 – 003741	Chairman	The way forward	

Council Business Division 1
Legislative Council Secretariat
12 September 2013