

立法會

Legislative Council

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Bills Committee on Professional Accountants (Amendment) Bill 2013

Background brief

Purpose

This paper provides background information on the Professional Accountants (Amendment) Bill 2013 ("the Bill") and summarizes the major views and concerns expressed by members of the Financial Affairs ("FA Panel") during consultation of the relevant legislative proposals in 2011 and 2012.

Background

2. At present, accountancy practices incorporated under the Companies Ordinance (Cap. 32) ("CO") as a company limited by shares may be registered under the Professional Accountants Ordinance (Cap. 50) ("PAO") as a corporate practice with the Hong Kong Institute of Certified Public Accountants ("the Institute"). As there was a pre-2003 requirement under CO that a company must have at least two directors/shareholders, in order to enable sole practitioner firms to opt for incorporation in compliance with that requirement, section 28D of PAO allows the Council of the Institute to permit a person who is not a certified public accountant or a certified public accountant (practising)¹ to become a director and nominee shareholder of a corporate practice with two directors/shareholders if the other director/shareholder is a certified public accountant (practising). CO was amended in 2003 to allow a company to be incorporated with a single director/shareholder but no corresponding changes were made to PAO.

¹ A certified public accountant is a person registered by the Institute as a certified public accountant by virtue of section 22 of the PAO. A certified public accountant (practising) means a certified public accountant holding a practicing certificate issued by the Institute under section 30 of the PAO. Only a certified public accountant (practising) is eligible to perform audits.

3. According to an information paper provided by the Institute, at the Annual General Meeting of the Institute in December 2005, members of the Institute passed a resolution to propose amending PAO, when the opportunity arises, to allow a sole certified public accountant (practising) to register as a corporate practice.

4. It has come to the attention of the Institute in recent years that there were instances of companies, not being corporate practices registered with the Institute under PAO, using the description "certified public accountant", the initials "CPA" or the characters "會計師" in their names in an attempt to mislead the public into believing that they are practice units under PAO qualified to provide auditing services.

5. While section 42(1)(ha) of the PAO prohibits a company, not being a corporate practice, to use certain descriptions² in its name which are reserved names for professionals qualified to perform audits under the PAO, it does not prohibit companies from using the description "certified public accountant", the initials "CPA" or the characters "會計師" in their names. As a result, companies may be able to use such description/initials/characters with the intention of causing any person to believe that they are practice units. According to the Institute, the Council of the Institute approved in May 2011 the proposed amendments to prohibit the use of the description "certified public accountant", the initials "CPA" or the characters "會計師" in the name of a non-corporate practice company, and members of the Institute were informed of the proposed amendments subsequently.

The Bill

6. The Bill is a Member's Bill sponsored by Hon Kenneth LEUNG. It seeks to amend PAO to –

- (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;
- (b) prohibit the use of certain misleading descriptions; and
- (c) make related technical and drafting amendments.

² The prohibited descriptions are: "certified public accountant (practising)", "public accountant", the initials "CPA (practising)", "PA" or the characters "執業會計師", "註冊核數師", "核數師" or "審計師".

7. The main provisions of the Bill include the following:

Corporate practice with only one shareholder

- (a) Clause 3(3) to (5) of the Bill proposes to amend section 28D(2)(c) of PAO by providing that a sole certified public accountant (practising) may incorporate a company with only one shareholder and to register the company as a corporate practice. Clauses 3(8) to (11) and (13) to (15), 4(7) and 6 of the Bill make consequential amendments to the other provisions of section 28D and section 42(5) of PAO, and by-law 29(e) of the Professional Accountants By-laws (Cap. 50 sub. leg. A). Clause 7 of the Bill provides for a transitional arrangement for the relevant corporate practices to transfer from the current regime to the proposed new regime;

Prohibiting the use of certain misleading descriptions

- (b) Clauses 4(5) and (6) of the Bill seeks to amend section 42(1)(ha) of PAO to prohibit a body corporate which is not a corporate practice from using the description "certified public accountant", the initials "CPA" or the characters "會計師" in its name with the intention of causing, or in a way which may reasonably cause, a person to believe that it is a practice unit registered under PAO; and

Related technical and drafting amendments

- (c) Clause 3(1) of the Bill proposes to amend section 28D(2)(b) of PAO to extend the application of the provision to a corporate practice having two shareholders. Clause 3(2), (6), (7), (12), (16) to (20) of the Bill makes drafting amendments to a number of provisions of section 28D of PAO. Clause 4(1) to (4) of the Bill provides for technical and drafting amendments to section 42(1)(ha) of PAO for the sake of clarity.

8. The Bill, if enacted, will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

Deliberations of the Panel on Financial Affairs

9. The Institute consulted FA Panel on the relevant legislative proposals in the Bill at the meetings on 4 July 2011 and 5 November 2012. Members noted that the Bill was to implement the legislative proposals put forward by the

Institute in the Professional Accountants (Amendment) Bill 2012 which was sponsored by Mr Paul CHAN Mo-po, a former Member of the Legislative Council ("LegCo"), during the Fourth LegCo. It was gazetted on 4 May 2012 and was put on the Agenda of Council meetings for First Reading and Second Reading but was not read before the Fourth LegCo stood prorogued. No objection was raised by Panel members to the legislative proposals. The major concerns and views expressed by members are summarized below.

Prohibition on use of name

10. Members enquired about the number of cases where the name "certified public accountant" or "CPA" or the characters "會計師" had been misused in the name of companies intended to cause people to believe that they were certified public accountant practices, and the follow-up actions taken by the Institute and the Police.

11. The Institute responded that in the first half of 2011, 32 companies or businesses, not being CPA practices registered with the Institute under PAO, had represented or advertised themselves as qualified to practise as a certified public accountant (practising). Some of these companies had been registered with the Companies Registry ("CR") or Business Registration Office ("BRO") of the Inland Revenue Department using the description "certified public accountant", the initials "CPA" or the characters "會計師" in their company or business names. As such descriptions were not prohibited under section 42(1)(ha) of PAO, companies might be able to use such description/initials/characters with the intention of causing people to believe that they were practice units. The Institute remarked that while it had reported the cases to the Police, in most cases the Police had difficulty in locating the responsible persons of the companies. In some cases, the companies concerned only provided accounting services in the Mainland, and advertised such services in Hong Kong. The Institute pointed out that it had embarked on a publicity campaign, including placing advertisement in the newspapers, regarding the use of names by practice units registered with the Institute. The Institute would also discuss with CR and BRO about possible administrative arrangements to plug the loophole.

12. In response to members' enquiry about whether the use of misleading descriptions was caused by the insufficient supply of certified public accountants leading to some customers engaging companies not registered with the Institute under PAO to provide accounting services at lower fees, the Institute remarked that the registration system under PAO aimed at ensuring the standard of public accountancy services provided by certified public accountants, and protecting the interest of the public. Companies which were not CPA corporate practices registered with the Institute would not be subject to the regulation of the Institute and might provide sub-standard services. The Institute also pointed out that the

problem was not a result of inadequate supply of certified public accountants, as there were 32 000 certified public accountants, out of whom about 10 000 were CPAs working in public practice.

13. Some members questioned whether it was appropriate to prohibit the use of the term "CPA" which might stand for other meanings. The Institute responded that it was recognized internationally that the term "CPA" stood for "certified public accountant", and the existing section 42 of PAO already prohibited any person who was not a certified public accountant from using the initials "CPA". The relevant amendment aimed to clarify that "any person" in section 42 of PAO also covered companies.

References

14. A list of relevant papers is in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
8 July 2013

Appendix

List of relevant papers

Date	Event	Papers/Minutes of meeting
4 July 2011	The Panel on Financial Affairs (FA Panel) was consulted on the Professional Accountants (Amendment) Bill 2011	Discussion paper (LC Paper No. CB(1)2601/10-11(01)) Minutes (LC Paper No. CB(1)324/11-12)
5 November 2012	FA Panel was consulted on the Professional Accountants (Amendment) Bill 2012	Discussion paper (LC Paper No. CB(1)91/12-13(05)) Minutes (LC Paper No. CB(1)359/12-13)
22 May 2013	The Bill was introduced in to the Legislative Council	The Bill Legal Service Division report (LC Paper No. LS 51/12-13)