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**Report of the Bills Committee on Professional Accountants
(Amendment) Bill 2013**

Purpose

This paper reports on the deliberations of the Bills Committee on Professional Accountants (Amendment) Bill 2013 ("the Bills Committee").

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 ("HKICPA"). 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 HKICPA 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.

3. According to HKICPA, it has come to its attention in recent years that there were instances of companies, not being corporate practices registered with HKICPA 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

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

provide auditing services. While section 42(1)(ha) of 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 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.

The Professional Accountants (Amendment) Bill 2013

4. The Professional Accountants (Amendment) Bill 2013 ("the Bill") is a Member's Bill and the Member in charge is Hon Kenneth LEUNG. The Bill was read the first time at the Council meeting of 22 May 2013. The purposes of the Bill and its main provisions are explained in the following paragraphs.

Corporate practice with only one shareholder

5. The Bill seeks to amend PAO to permit a sole certified public accountant (practising) to incorporate a company with only one shareholder and to register the company as a corporate practice following the 2003 amendment to CO abolishing the requirement that a company must have at least two directors/shareholders.

6. Clause 3(3) to (5) of the Bill proposes to amend section 28D(2)(c) of PAO to provide 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 description, initials and characters

7. The Bill proposes to prohibit a body corporate, not being a corporate practice registered with HKICPA, to use the description "certified public accountant", the initials "CPA" and the characters "會計師" in its name in addition to those now specifically prohibited under PAO.

8. Clause 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 "

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".

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.

Related technical and drafting amendments

9. The Bill also makes related technical and drafting amendments. 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.

Commencement of the Bill

10. Clause 1(2) of the Bill provides that the Bill 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.

The Bills Committee

11. At the House Committee meeting on 24 May 2013, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is at **Appendix I**. Under the chairmanship of Hon Charles Peter MOK, the Bills Committee has held one meeting to discuss with HKICPA and the Administration. The Bills Committee has posted a general notice on the website of LegCo and written to the 18 District Councils ("DCs") to invite the public and DCs for written views on the Bill. No submissions have been received by the Bills Committee.

Deliberations of the Bills Committee

12. The Bills Committee supports the Bill. The major deliberations of the Bills Committee are set out in the ensuing paragraphs.

Consultation on the legislative proposals

13. Noting that no public consultation has been conducted on the Bill, members of the Bills Committee have enquired about HKICPA's consultation with its members on the legislative proposals.

14. HKICPA has advised that its members passed a resolution on the proposed amendments to PAO to allow a sole certified public accountant

(practising) to register as a corporate practice at the Annual General Meeting in December 2005. As regards the proposal prohibiting the use of certain misleading description/initials/characters, it was approved by the Council of HKICPA in May 2011 and members of HKICPA were subsequently informed of the proposed amendment. HKICPA has further pointed out that the proposals included in the Bill are the same as those contained in the Professional Accountants (Amendment) Bill 2012 ("the 2012 Bill") put forward by Mr CHAN Mo-po (a former Member of the Legislative Council ("LegCo")) during the Fourth LegCo except that a few textual amendments have been added. HKICPA has recently informed its members about the new textual amendments included in the Bill. In this connection, the Bills Committee notes that 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.

The impact of the legislative proposals on the public

15. In response to enquiry of the Bills Committee on the possible impact of the legislative proposals on the public, HKICPA has pointed out that 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 will have no impact on the public given that it has already been the existing arrangement to allow a sole certified public accountant (practising) to incorporate a company with a nominee shareholder and register the company as a corporate practice. HKICPA has advised that the position that the sole certified public accountant (practising) taking up unlimited liability for the company will remain unchanged.

16. Regarding the proposal prohibiting the use of certain misleading description/initial/characters by a body corporate not being a corporate practice registered with HKICPA, HKICPA has advised that it will help plug the loophole where such body corporate has attempted to mislead the public into believing that it is a practice unit under PAO and qualified to provide auditing services, and hence will protect the interest of the public.

17. Members of the Bills Committee have sought clarification on whether companies which are not corporate practices registered with HKICPA under PAO and currently using the description "certified public accountant", the initials "CPA" or the characters "會計師" in their names have to change their names after enactment of the Bill. HKICPA has responded that after discussion with the Companies Registry ("CR") a few years ago, companies not being corporate practices registered with HKICPA under PAO are no longer allowed to register their names with CR using the above description/initials/characters unless the relevant applicant has obtained, and produced to CR, the prior approval of HKICPA to the company name. It is the purpose of the Bill to specify such prohibitions explicitly in PAO.

Technical issues relating to the Bill

Substitution of "shall" by "must" in certain provisions

18. Members note that a number of the proposed amendments in the Bill involve repealing "shall" and substituting it by "must" in provisions such as the proposed amendments in section 28D of PAO. The Bills Committee has sought information from the Administration on the policy and practice regarding modernizing legislation in this regard.

19. The Administration has advised that the Department of Justice ("DoJ") is committed to modernizing legislation by plain language. The word "must" is generally regarded as the plain language equivalent of "shall". According to paragraph 9.2.18 of the *Drafting Legislation in Hong Kong: A Guide to Styles and Practices* (the "Guide") published by the Law Drafting Division ("LDD") of DoJ in 2012, "must" and "shall" should not be used in the same subsection. Instead the existing references to "shall" in the same subsection should be changed to "must". For the sake of tidiness, consideration should be given to changing the references to "shall" in the proximity of the amended provision on the understanding that the amendment is purely consequential. The Administration has further explained that the Bill proposed amendments to section 28D(2)(c)(ii) and (6)(a) of PAO and that "must" is used in the newly added provisions. According to paragraph 9.2.18 of the Guide, all references to "shall" in subsection (2) of that section should be changed to "must" accordingly; and for the sake of tidiness, consideration should also be given to changing all references to "shall" in the proximity of that provision to "must". Hence, LDD has invited HKICPA to consider adopting the same drafting styles and changing all references to "shall" in the whole section 28D to "must". The suggestion has been accepted by HKICPA.

The amended section 28D(1) of PAO

20. The Bills Committee notes that Part 16 of Schedule 10 (which contains consequential and related amendments to other ordinances and subsidiary legislation) to the new CO has amended section 28D(1) of PAO. While the new CO was passed by LegCo on 12 July 2012, it has not yet come into operation. As section 28D(2)(a) of PAO has made reference to "subsection (1)", the Bills Committee notes that it will be necessary to make appropriate amendment to section 28D(2)(a) of PAO upon commencement of that Part 16. In the light of the comment of the legal adviser to the Bills Committee, members have considered making amendment to section 28D(2)(a) of PAO to reflect the new CO amendment on section 28(D)1 by moving a Committee Stage amendment ("CSA") to clause 3 of the Bill and sought the Administration's views in this regard.

21. The Administration has pointed out that the Administration's plan is to bring the new CO into operation in the first quarter of 2014. In the circumstances, it is likely that the Bill will commence ahead of the new CO. Since there are 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 the Bills Committee can be taken forward through such an exercise. Members agree that the suggested amendment should be taken forward by the Administration in the course of updating the list of consequential amendments arising from the new CO.

Committee Stage amendments

22. The Bills Committee notes the comments made by the legal adviser to the Bills Committee in respect of section 28D(3)(c)(ii)(A), and sections 42(1)(ii) and 42(4)(a) of PAO in view of the proposed amendments set out in clause 3(4) and (5), and clause 4(1) of the Bill respectively. The Bills Committee agrees that the Chairman of the Bills Committee will move CSAs to the Bill to make technical amendments to these PAO provisions on behalf of the Bills Committee.

Committee Stage amendments

23. The Chairman of the Bills Committee will move CSAs to the Bill on behalf of the Bills Committee as explained in paragraph 22 of this Report.

Recommendation

24. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 30 October 2013.

Consultation with the House Committee

25. The Bills Committee reported its deliberations to the House Committee on 11 October 2013.

Bills Committee on Professional Accountants (Amendment) Bill 2013

Membership list

Chairman	Hon Charles Peter MOK
Members	Hon Kenneth LEUNG Hon Dennis KWOK Hon SIN Chung-kai, SBS, JP Dr Hon Elizabeth QUAT, JP
	(Total : 5 members)
Clerk	Ms Connie SZETO
Legal Adviser	Ms Wendy KAN