

立法會
Legislative Council

LC Paper No. LS51/12-13

**Paper for the House Committee Meeting
on 10 May 2013**

**Legal Service Division Report on
Professional Accountants (Amendment) Bill 2013
(Member's Bill)**

I. SUMMARY

- 1. The Bill** The Member in charge for the Bill is Hon Kenneth LEUNG.

The Bill proposes 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 following the 2003 amendment to the Companies Ordinance (Cap. 32) abolishing the requirement that a company must have at least two directors/shareholders;
 - (b) prohibit the use of certain misleading descriptions by a body corporate in its name in addition to those now specifically prohibited; and
 - (c) make related technical and drafting amendments.

- 2. Public Consultation** Members of the Hong Kong Institute of Certified Public Accountants (the Institute) passed a resolution in December 2005 to propose amendment to allow a sole certified public accountant (practising) to register a corporate practice. They have been informed of the proposed amendments to prohibit the use of the description "certified public accountant", the initials "CPA" or the characters "會計師" upon approval by the Institute's Council in May 2011. No information about any public consultation is available.

- 3. Consultation with LegCo Panel** The Panel on Financial Affairs was consulted on the legislative proposals on 5 November 2012. Members raised no objection.

- 4. Conclusion** The Bill updates the requirements for forming a corporate practice and proposes some additions to the current list of misleading descriptions that are prohibited to be used. Members may wish to confirm whether there is a need to set up a Bills Committee. We will convey some comments on drafting to the Member in charge for his consideration.

II. REPORT

The date of First Reading of the Bill is 8 May 2013. No LegCo Brief on the Bill has been issued. For further information regarding the legislative proposals contained in the Bill, Members may refer to the paper issued by the Hong Kong Institute of Certified Public Accountants (the Institute) in October 2012 (LC Paper No. CB(1)91/12-13(05)) for discussion at the meeting of the Panel on Financial Affairs (the FA Panel) on 5 November 2012 (the Institute's Paper).

Object of the Bill

2. The Bill proposes to amend the Professional Accountants Ordinance (Cap. 50) (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.

Background

3. This is a Member's Bill introduced with the consent of the Chief Executive. The Member in charge is Hon Kenneth LEUNG.

4. The Bill seeks to implement the same legislative proposals as put forward by the Institute in the Professional Accountants (Amendment) Bill 2012 (the Former Bill). The Former Bill was intended to be presented by Hon Paul CHAN Mo-po, a former Member of the Legislative Council (the LegCo), to the Fourth LegCo¹. 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 reached before the Fourth LegCo stood prorogued.

¹ The only differences between the two bills are as follows -

- (a) the Bill elaborates in detail its purposes in its long title as compared with that of the Former Bill;
- (b) the Bill makes drafting amendments to certain provisions of the Former Bill; and
- (c) the Bill proposes additional textual amendments to be made to section 28D of PAO which are not covered in the Former Bill.

Provisions of the Bill

Corporate practice with only one shareholder

5. At present, accountancy practices incorporated under the Companies Ordinance (Cap. 32) (CO) as a company limited by shares may be registered under PAO as a corporate practice with 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 (practising) to become a director/shareholder (but only as nominee shareholder) 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.

6. Clause 3(3) to (5) of the Bill now 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

7. According to paragraph 7 of the Institute's paper, it has come to the attention of the Institute in recent years that there were instances of companies, not being corporate practices, using the description "certified public accountant", the initials "CPA" or the characters "會計師" in their names, resulting in the public being misled into believing that these companies to be practice units under PAO qualified to provide auditing services.

8. Clauses 4(5) and (6) of the Bill therefore 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. The effect is to make any such contravention punishable with the same penalty as with any contravention of the existing prohibitions against such

descriptions, initials or characters as "certified public accountant (practising)", "public accountant", "CPA (practising)" or "執業會計師".

Related technical and drafting amendments

9. 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

10. 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.

Public Consultation

11. According to paragraph 11 of the Institute's Paper, members of the Institute passed a resolution at its Annual General Meeting in December 2005 to propose amendment to PAO to allow a sole certified public accountant (practising) to register a corporate practice. Further, as stated in paragraph 12 of the Institute's Paper, members of the Institute have been informed of 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 upon approval by the Council of the Institute in May 2011. No information about any public consultation is available.

Consultation with LegCo Panel

12. The Clerk to the FA Panel has advised that the Panel was consulted on the legislative proposals on 5 November 2012. Members raised no objection and noted the support of the Institute on the Bill.

Conclusion

13. The Bill updates the requirements for forming a corporate practice and proposes some additions to the current list of misleading descriptions that are prohibited to be used. Members may wish to confirm whether there is a need to set up a Bills Committee. The Legal Service Division will convey some comments on drafting to the Member in charge for his consideration.

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