

**President's ruling on
the Professional Accountants (Amendment) Bill 2013
intended to be introduced by Hon Kenneth LEUNG**

Hon Kenneth LEUNG submitted to me on 15 January 2013 the Professional Accountants (Amendment) Bill 2013 (“the 2013 Bill”), which he intends to introduce into the Legislative Council (“LegCo”).

2. Rule 51(3) of the Rules of Procedure provides that Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government. Rule 51(4) provides that in the case of a bill which, in the opinion of the President, relates to Government policies, the written consent of the Chief Executive (“CE”) is required for its introduction.

3. To assist me in considering whether Mr LEUNG’s Bill is caught by Rule 51(3) and (4) of the Rules of Procedure, I invited the Administration to comment on the 2013 Bill and Mr LEUNG to respond to the Administration’s comments.

The 2013 Bill

4. According to the paper¹ provided by the Hong Kong Institute of Certified Public Accountants (“the Institute”) to the Panel on Financial Affairs (“FA Panel”), the 2013 Bill seeks to amend the Professional Accountants Ordinance (Cap. 50) (“PAO”) to implement the following proposals approved by the Council of the Institute:

- (a) to enable a certified public accountant (practising)² to incorporate a company with only one director and shareholder and to register the company as a corporate practice, which is qualified to perform audits; and

¹ The paper (LC Paper No. CB(1)91/12-13(05)) entitled “The Hong Kong Institute of Certified Public Accountants’ Proposed Member’s Bill to amend the Professional Accountants Ordinance (Cap.50)” was issued by the Institute in October 2012 for discussion at the meeting of the FA Panel on 5 November 2012.

² A certified public accountant is a person registered by the Institute 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 the Institute under section 30 of PAO. Only a certified public accountant (practising) is eligible to perform audits.

- (b) to prohibit any company, not being a corporate practice registered with the Institute, to use the description “certified public accountant”, the initials “CPA” or the characters “會計師” in its name intended to cause, or which may reasonably cause, any person to believe that it is a practice unit registered under PAO.

The Administration’s comments

5. The Administration submits that the 2013 Bill does not relate to public expenditure, political structure or the operation of the Government, but relates to Government policies. The Administration points out that PAO, whose purpose is to establish the Institute and provide for the registration and control of the accountancy profession, reflects the Government’s policies on the regulation of professional accountants by the Institute. Clause 3 of the 2013 Bill which seeks 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 follows the amendment to the Companies Ordinance (Cap. 32) (“CO”) in 2003 to abolish the requirement that a company must have at least two shareholders. The Administration submits that as clause 3 of the 2013 Bill is in line with the existing Government policy as reflected in the aforesaid amendment to CO in 2003 and affects a significant aspect of the requirements for registration of an accounting practice as a corporate practice as set out in section 28D(2)(c) of PAO by altering the number of shareholders required for registration as a corporate practice, it relates to Government policy.

6. The Administration further submits that the regulation governing unqualified service-providers who present themselves as qualified corporate practices is set out in section 42 of PAO. Clause 4 of the 2013 Bill amends this section to specifically prohibit a body corporate, not being a corporate practice registered under PAO, 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 Administration therefore argues that as it is the Government’s policy to support the regulation of unqualified service-providers who present themselves as qualified corporate practice, and this policy is reflected in the offence and penalty provisions in PAO, clause 4 of the 2013 Bill relates to Government policy.

Hon Kenneth LEUNG's response

7. Hon Kenneth LEUNG does not have any comments on the views of the Administration and agrees that the written consent of CE is required.

My opinion

8. The 2013 Bill intended to be introduced by Hon Kenneth LEUNG contains various amendments to PAO. The Administration submits that those amendments set out in clauses 3 and 4 of the 2013 Bill relate to Government policies within the meaning of Rule 51(4) of the Rules of Procedure and therefore the 2013 Bill may not be introduced without the written consent of CE.

9. Hon Paul CHAN, a former Member of LegCo, submitted the Professional Accountants (Amendment) Bill 2011 ("the 2011 Bill") to me on 27 September 2011 for my ruling on whether it might be introduced into LegCo. I ruled that the 2011 Bill related to Government policies within the meaning of Rule 51(4) of the Rules of Procedure and the written consent of CE was required for its introduction³. The 2011 Bill⁴ was put on the Agenda of Council meetings for first reading and second reading but was not reached before the Fourth LegCo stood prorogued.

10. I have studied the 2013 Bill very carefully. The 2013 Bill contains the same proposals and aims to achieve the same effects as those of the 2011 Bill. The only differences between the two Bills, as explained by Counsel to the Legislature to me, are as follows:

- (a) the 2013 Bill elaborates in detail the purposes of the Bill in its long title;
- (b) the 2013 Bill makes drafting amendments to certain provisions of the 2011 Bill; and

³ The ruling was issued to all Members vide LC Paper No. CB(3)100/11-12 on 2 November 2011.

⁴ The 2011 Bill was renamed as the Professional Accountants (Amendment) Bill 2012 to reflect the year in which it was presented to the Fourth LegCo.

- (c) the 2013 Bill proposes additional textual amendments to be made to section 28D of PAO which are not covered in the 2011 Bill.

11. In my ruling on the 2011 Bill, I mentioned that PAO was introduced as a Government Bill and enacted in 1972 to regulate the accountancy profession. Since then, it had been amended by the Administration from time to time, including those provisions sought to be amended by the 2011 Bill. It is clear to me that the whole PAO represents Government policies with regard to the regulation of the accountancy profession. In my previous rulings, I have stated that in order for a bill not to be caught by Rule 51(4) of the Rules of Procedure, the bill must not have substantive effect on Government policies, which include policies reflected in legislation.

12. In making my ruling on the 2011 Bill, Counsel to the Legislature explained to me that at present, accounting practices incorporated under CO may register under PAO as a corporate practice with the Institute. As it was required under the pre-2003 CO that a company must have at least two directors and shareholders, in order to enable sole practitioner firms to opt for incorporation in compliance with such a requirement, PAO allows the Council of the Institute to permit a person who is not a certified public accountant (practising) to become a director and nominee shareholder if the other director/shareholder is a certified public accountant (practising). CO was amended in 2003 to allow a single shareholder to incorporate a company but no corresponding changes were made to PAO.

13. Clause 3 of the 2011 Bill, which is essentially the same as clause 3 of the 2013 Bill, proposed to amend 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. I stated in my ruling on the 2011 Bill that this proposed amendment not only relates to the Government policies on the regulation of the accountancy profession as reflected in PAO but also, in my view, clearly affects a significant aspect of the requirements for registration of an accounting practice as a corporate practice set out in its section 28D(2)(c) by altering the number of shareholders required for registration as a corporate practice. This view is quoted by the Administration in substantiating its argument that clause 3 of the 2013 Bill relates to Government policy.

14. As stated in my previous ruling, clause 4 of the 2011 Bill, which is again the same in essence as clause 4 of the 2013 Bill, sought 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 which may reasonably cause, any person to believe that it is a practice unit registered under PAO, with the effect of making any contravention punishable with the same penalty as with contravention of the existing prohibitions against such descriptions as “certified public accountant (practising)”, “public accountant” and “CPA (practising)”. These additional prohibitions relate to what the Administration has reiterated in its submission on the 2013 Bill as “Government’s policy to support the regulation of unqualified service-providers who present themselves as qualified corporate practice”, and the policy is reflected in the offence and penalty provisions in PAO. This view is also quoted by the Administration in substantiating its argument that clause 4 of the 2013 Bill relates to Government policy. The prohibitions clearly have a substantive effect on the policy on the regulation of unqualified service-providers in that clause 4 has the effect of enhancing that policy in a material aspect by increasing the prohibitions against misleading descriptions.

15. As advised by Counsel to the Legislature, the 2013 Bill contains other technical and drafting amendments to PAO. However, in view of my opinion expressed in paragraphs 13 and 14 above, I do not think it is necessary for me to deal with those amendments.

My ruling

16. Same as my ruling on the 2011 Bill, I rule that the 2013 Bill intended to be introduced by Hon Kenneth LEUNG relates to Government policies within the meaning of Rule 51(4) of the Rules of Procedure. The 2013 Bill may not be introduced without the written consent of CE.



(Jasper TSANG Yok-sing)
President
Legislative Council

22 February 2013