

FINANCIAL REPORTING COUNCIL (AMENDMENT) BILL 2018

2018年財務匯報局(修訂)條例草案

立法會法案委員會
LEGCO BILLS COMMITTEE

13 FEBRUARY 2018

2018年2月13日

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FINANCIAL SERVICES BRANCH
FINANCIAL SERVICES AND THE TREASURY BUREAU
財經事務及庫務局 (財經事務科)

OUTLINE 大綱

I Objectives and Background

目標及背景

II Legislative Proposals

立法建議

I OBJECTIVES 目標

To enhance the independence of
existing regulatory regime for auditors of listed entities
提高現行上市實體核數師規管制度的獨立性

- Better investor protection
加強對投資者的保障

- On par with the
prevailing international
standard and practice
與現行國際標準和做法
看齊

- Enable Hong Kong to join
IFIAR

[53 jurisdictions already joined; Hong
Kong not yet eligible]

讓香港能參與IFIAR

[已有53個司法管轄區參與；但香
港未合資格]

IFIAR: International Forum of Independent
Audit Regulators

獨立審計監管機構國際論壇

BACKGROUND 背景

- Hong Kong's current regulatory regime for auditors considered by many as a self-regulatory one
不少人認為香港現時的核數師規管制度屬自律規管制度
- For many years, all relevant statutory powers under HKICPA
多年來所有法定權力屬香港會計師公會
- Dual roles of HKICPA: a professional body representing the interests of members AND a statutory regulatory body
香港會計師公會的雙重身分：代表業界利益的專業團體以及法定規管機構

HKICPA: Hong Kong Institute of Certified Public Accountants

香港會計師公會

Year 年份	Event 事件
2001 - 02	Major audit failure of listed corporations in the US 美國發生關於上市公司的重大審計失誤
2004 - 07	<p data-bbox="359 325 1638 425">Hong Kong took positive steps to enhance the regulatory regime - 香港主動推行改善規管制度的措施-</p> <ul data-bbox="359 496 1653 999" style="list-style-type: none"><li data-bbox="359 496 1653 711">• Introduced independent lay persons to the Governing Council of HKICPA and its disciplinary process (2004) 在香港會計師公會理事會及紀律處分程序加入獨立的業外人士 (2004年)<li data-bbox="359 782 1653 999">• Established FRC to take over investigation powers of HKICPA in respect of auditors of listed entities (2007) 設立財務匯報局，接管香港會計師公會調查上市實體核數師的權力 (2007年) <p data-bbox="359 1119 1085 1159">FRC: Financial Reporting Council 財務匯報局</p>

2006	<p>Establishment of IFIAR 獨立審計監管機構國際論壇成立</p> <ul style="list-style-type: none">• Membership only open to regulators of auditors who are independent of audit profession 成員只限獨立於審計業的核數師監管機構• Membership grown to 53 (Australia, Canada, France, Germany, Japan, Singapore, UK, US, etc.) 已增至53個成員(澳洲、加拿大、法國、德國、日本、新加坡、英國、美國等)
2014	<p>Recommendations of International Monetary Fund 國際貨幣基金組織的建議</p> <ul style="list-style-type: none">• Fully independent authority for oversight of audit profession 完全獨立的機構負責監察審計業界• Jurisdiction to cover all auditors of companies listed in Hong Kong 對所有香港上市公司的核數師具有管轄權• Strong enforcement power 強大紀律處分權力

PUBLIC CONSULTATION 公眾諮詢

Year 年份	Event 事件
Since 2011 2011年起	Audit profession advocated for an independent regulator of listed entity auditors 業界倡議設立上市實體核數師的獨立監察機構
June to September 2014 2014年6月至9月	Three-month public consultation 進行為期三個月的公眾諮詢
June to July 2015 2015年6至7月	Published the Consultation Conclusions and reported to the LegCo Panel on Financial Affairs 公布諮詢總結，並向立法會財經事務委員會匯報諮詢結果 <ul style="list-style-type: none"><li data-bbox="575 739 1696 876">• Overwhelming support for the objective and direction of the reform 改革的目的和方向獲絕大部分回應者支持<li data-bbox="575 931 1696 1068">• Refined certain proposals having regard to the views of the audit profession 在考慮業界建議後，調整部分建議
Since July 2015 2015年7月起	After the publication of the Consultation Conclusions, continued to engage stakeholders on the details of the new regime and make refinements as necessary 在發表諮詢總結後，繼續與持份者就新監管制度，保持聯繫，並優化部分細節

II LEGISLATIVE PROPOSALS 立法建議

- FRC to become a full-fledged oversight body for auditors of listed entities (“PIEs”)

財務匯報局成為全面的上市實體核數師監管機構
 (“公眾利益實體”)

- “PIEs” to include-

- corporations with issued shares or stocks listed in Hong Kong
- collective investment schemes with interests listed in Hong Kong

公眾利益實體包括-

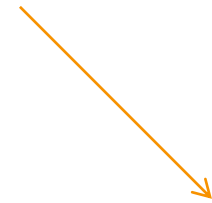
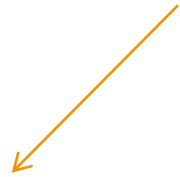
- 有已發行股份或股額在香港上市的法團
- 有權益在香港上市的集體投資計劃

- Only properly registered/recognised PIE auditors can undertake PIE engagements

只有妥為註冊/認可的公眾利益實體核數師，方可承擔公眾利益實體項目

PIEs: Public Interest Entities 公眾利益實體

Post-reform FRC
改革後的財務匯報局



“Light-handed” oversight of HKICPA’s functions in respect of PIE auditors

以較寬鬆的模式監察香港會計師公會關於公眾利益實體核數師的職能

- Registration
註冊
- Setting CPD requirements
制訂專業進修規定
- Setting professional standards
制訂專業準則
 - Professional ethics
專業道德
 - Auditing
核數
 - Assurance practices
核證執業

CPD: Continuing Professional Development 專業進修

Inspection
查察



Investigation
(existing function)
調查
(現有職能)



Disciplinary Proceedings
紀律程序

Recognition of overseas auditors
認可
境外核數師

REGISTRATION AND RECOGNITION OF PIE AUDITORS

公眾利益實體核數師的註冊和認可

Registration of local PIE auditors 本地公眾利益實體核數師的註冊

- By HKICPA
由香港會計師公會註冊
- No material change to eligibility criteria
資格準則並無實質改變

Recognition of overseas PIE auditors 境外公眾利益實體核數師的認可

- By FRC
由財務匯報局認可
- Eligibility criteria largely modelled on prevailing requirements of SFC and HKEX
資格準則主要根據證監會和港交所的現行規定
- Recognition of relevant Mainland audit firms under existing “Reciprocal Arrangement”
認可現行“互惠安排”下的有關內地審計事務所

SFC: Securities and Futures Commission 證監會

HKEX: Hong Kong Exchanges and Clearing Ltd. 港交所

INSPECTION 查察

(function transferred from HKICPA 轉移自香港會計師公會的職能)

- ◎ FRC responsible for conducting recurring inspections of auditors in respect of their PIE engagements

財務匯報局負責定期查察核數師承擔的公眾利益實體項目

- ◎ Range of inspection powers on par with those of other financial regulators in Hong Kong

查察權力的範圍與本港其他金融監管機構相若

- ◎ Safeguards to ensure proper exercise of inspection powers; e.g. can only enter into business premises at reasonable time for ascertaining compliance, statutory defence of “reasonable excuse”

會有保障措施確保妥善行使查察權力；例如只可在合理時間進入業務處所以確定是否有遵守要求，設有“合理辯解”的法定辯護理由

INVESTIGATION 調查

(existing function of FRC 財務匯報局的現有職能)

- ◎ FRC continues to be responsible for investigation in relation to PIE auditors
財務匯報局繼續負責關於公眾利益實體核數師的調查
- ◎ Existing powers of investigation largely remain the same
調查的權力與現時大致一樣
- ◎ If irregularity of auditor is found in an investigation -
 - Existing regime: referral to HKICPA for disciplinary proceedings
 - New regime: FRC continues with its disciplinary proceedings如調查中發現核數師的不當行為 -
 - 現行制度：轉交香港會計師公會進行紀律程序
 - 新制度：財務匯報局繼續其紀律程序

DISCIPLINARY MECHANISM 紀律機制

(function transferred from HKICPA 轉移自香港會計師公會的職能)

FRC empowered to impose a range of disciplinary sanctions

財務匯報局獲賦權實施紀律處分

- | | |
|--|---|
| <ul style="list-style-type: none">• Revoke/suspend registration or recognition
撤銷/暫時吊銷註冊或認可• Prohibit an auditor from applying for registration/
recognition for a period of time
禁止核數師在一段時間內申請註冊/認可• Reprimand an auditor
譴責核數師 | <ul style="list-style-type: none">➤ Similar to existing regime
與現行制度相若 |
| <ul style="list-style-type: none">• Order an auditor to pay a pecuniary penalty with maximum level capped at HK\$10 million or three times the amount of profit gained/loss avoided, whichever is higher
命令核數師繳付最多1,000萬元或相等於其獲取的利潤金額或避免的損失金額三倍(以金額較大者為準)的罰款 | <ul style="list-style-type: none">➤ Under existing regime, pecuniary penalty capped at \$500,000
現行制度的罰款上限為500,000元 |

PROCEDURAL SAFEGUARDS 程序保障措施

I. Statutory Requirements 法定措施

Reasonable opportunities of being heard at various stages
在不同階段均有合理的陳詞機會



Statutory obligation to issue guidelines on exercise of power to impose
pecuniary penalty
有法定責任發出指引說明如何行使罰款的權力



Independent review and appeal mechanism for disciplinary decisions
有關紀律處分決定的獨立覆核及上訴機制

PROCEDURAL SAFEGUARDS 程序保障措施

II. Administrative Arrangements 行政安排

China wall for disciplinary decision-making
紀律處分的決定與其他職能分隔



Independent audit experts to provide expert opinions on auditing standards
獨立審計專家就審計準則提供專家意見



Independent legal experts to give views in contentious cases
獨立法律專家就爭議個案給予意見

The above administrative arrangements have addressed the concerns of the audit profession on the FRC's disciplinary powers

上述行政安排回應了審計業界對財務匯報局在紀律處分權力方面的關注

REVIEW AND APPEAL 覆核及上訴

Independent Review Tribunal

獨立覆核審裁處

- Make determinations on review against-
 - (i) FRC's disciplinary decision
 - (ii) HKICPA's registration decision
 - (iii) FRC's recognition decision

就以下覆核作出裁決-

- (i) 財務匯報局的紀律處分決定
- (ii) 香港會計師公會的註冊決定
- (iii) 財務匯報局的認可決定

- Composed of a Chairman (a person eligible for appointment as a Judge of the High Court) and two other members
由一名主席及兩名其他成員組成，主席須為合資格獲委任為高等法院法官的人士

- Automatic stay of FRC's disciplinary decisions
財務匯報局的紀律處分決定將自動暫緩執行

if granted leave
如獲許可

Court of Appeal

上訴法庭

Appeal on

- Question of law
- Question of fact
- Question of mixed law and fact

上訴可關於

- 法律問題
- 事實問題
- 法律兼事實問題

COMPOSITION OF FRC 財務匯報局的組成

Current FRC

現時的財務匯報局

- Include 3 members nominated by HKICPA, SFC and HKEX and an ex-officio member representing Government
包括三名分別由香港會計師公會、證監會和港交所提名的成員及一名代表政府的當然成員
- Majority are “lay members”
大部分成員須為“業外人士”

Independence 獨立
+
Expertise 專才

Post-reform FRC

改革後的財務匯報局

- At least 9 directors to be appointed by the Chief Executive
由行政長官委任最少9名董事
- Majority to be non-executive directors
大部分為非執行董事
- Majority to be “non-practitioners”
大部分為“非執業人士”
- At least two persons possessing knowledge of and experience in PIE engagements
至少兩人須具備公眾利益實體項目的知識及經驗

A “non-practitioner” is a person who is not, or has not within the previous three years been, a certified public accountant (practising) or a partner, director, agent or employee of a practice unit.

“非執業人士”為現在及在過去三年內不曾是執業會計師或執業單位的合夥人、董事、代理人或僱員。

FUNDING MECHANISM 財政機制

- Key Principles:
 - “User pays”
 - The independent auditor oversight body should be operationally and financially independent of Government

主要原則：

- “用者自付”
 - 獨立核數師監察機構須在運作及財政上獨立於政府
- Three types of new levies

三項新徵費

NEW LEVIES 新徵費

Levy on investors of securities transactions 證券交易投資者徵費	Levy on PIEs 公眾利益實體徵費	Levy on PIE auditors 公眾利益實體核數師徵費
0.00015% of consideration (paid by each of seller and purchaser) 買方和賣方各繳付成交價的0.00015%	4.2% of annual listing fee for a calendar year 每個曆年繳付每年上市費用的4.2%	\$12,310 for a calendar year in respect of every PIE client 每個曆年就每個公眾利益實體客戶繳付12,310元
For a transaction valued at \$100,000, seller and purchaser each be required to pay a levy of \$0.15 如交易額為10萬元，買賣雙方須分別繳付0.15元的徵費	Listed corporations required to pay a levy of around \$4,000 to \$50,000 per year 上市公司須繳付的徵費約為每年4千至5萬元	<ul style="list-style-type: none"> ➤ Annual levy for Big-4 firms: around \$2.6m - \$4.9m 四大會計師行每年的徵費約為260萬至490萬元 ➤ Annual levy for other audit firms: \$12,310 to around \$1.4m 其他會計師行每年的徵費為12,310元至約140萬元
50% of total contribution 總額的50%	25% of total contribution 總額的25%	25% of total contribution 總額的25%

Having regard to the concerns from the audit profession on the financial implications brought by the new regime on them, especially on small and medium-sized audit firms, the contributions from sellers and purchasers in securities transactions, PIEs and PIE auditors to the funding of the post-reform FRC have been changed from equal contributions to the ratio of 50:25:25

因應審計業界關注新制度對公眾利益實體核數師，尤其是中小型核數師事務所在財政方面影響，來自證券交易買賣雙方、公眾利益實體，及公眾利益實體核數師的徵費收入，在財務匯報局的經費中所佔比率，由同等份額改訂為50：25：25

ADJUSTMENT MECHANISM OF LEVIES

徵費調整機制

- The rate/amount of the levies are specified in the Bill
條例草案訂明新徵費的比率／款額
- Adjustments to the rates or amounts of the levies are subject to negative vetting by LegCo
日後如要調整徵費比率或款額，須按立法會先訂立後審議的程序通過
- The annual budget of the FRC is subject to the approval of the Financial Secretary
財務匯報局每年的開支預算，須經財政司司長審批

THANK YOU

謝謝