

**Bills Committee on Financial Reporting Council (Amendment) Bill 2018
("the Bill")**

Draft Committee Stage Amendments

As reported in our paper to the Bills Committee on 25 October 2018 (LC Paper No. CB(1)98/18-19(03)) and explained at the meeting of the Bills Committee held on 29 October 2018, the Government will propose Committee Stage Amendments ("CSAs") to the Bill to address a number of issues identified or brought up by stakeholders concerning the regulation of overseas auditors and the basis for calculating the levy on auditors under the new auditor regulatory regime. In addition, some other technical or textual amendments are also necessary. This paper sets out the full set of the draft CSAs.

2. Members are invited to examine the Government's draft CSAs at **Annex A**. A marked-up revision of the relevant clauses of the Bill is at **Annex B**. The reasons for the draft CSAs have been provided in the footnotes in Annex B as appropriate. These draft CSAs are subject to revisions if necessary.

**Financial Services and the Treasury Bureau
27 November 2018**

Financial Reporting Council (Amendment) Bill 2018

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
1	By deleting subclause (2) and substituting— “(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.”.
4(13)	By deleting paragraph (a) and substituting— “(a) before the definition of <i>audit</i> — Add “ <i>2019 Amending Ordinance</i> (《2019 年修訂條例》) means the Financial Reporting Council (Amendment) Ordinance 2019 (of 2019); <i>2019 Ordinance commencement date</i> (《2019 年條例》生效日期) means the day on which the 2019 Amending Ordinance comes into operation;”.
4(13)(b)	In the proposed definition of <i>transitional period</i> , by deleting paragraphs (a) and (b) and substituting— “(a) beginning on the 2019 Ordinance commencement date; and (b) ending on 31 December of the same year;”.
7(4)	In the proposed section 4(1), by deleting “2018” and substituting “2019”.
7(8)	In the proposed section 4(2), by deleting “2018” and substituting “2019”.
7(13)	In the proposed section 4(3), by deleting “2018” and substituting “2019”.
7(14)	In the proposed section 4(4), by deleting “2018” and substituting

“2019”.

7(16) In the proposed section 4(5), by deleting “2018” and substituting “2019”.

9 In the proposed section 7(1)(a), by deleting “and a non-practitioner”.

9 By deleting the proposed section 7(2) and (3) and substituting—

“(2) All members of the FRC must be non-practitioners appointed by the Chief Executive.

(3) Among the members of the FRC, the number of non-executive directors must exceed the number of executive directors.”.

9 In the proposed section 7(4)(a), by deleting “2” and substituting “one-third”.

11(3) In the proposed section 9(b)(iv), by deleting “accounting;”.

19 By deleting the proposed section 17(2) and substituting—

“(2) The first financial year of the FRC after the commencement of the 2019 Amending Ordinance (*first financial year*)—

(a) begins on the 2019 Ordinance commencement date; and

(b) ends on the 31 March immediately after the first anniversary of that commencement date.”.

19 By deleting the proposed section 17(3)(a) and (b) and substituting—

“(a) for the first financial year—as soon as practicable after the 2019 Ordinance commencement date;

(b) for the second financial year—before the 31 December immediately before the end of the first financial year; or”.

23 By deleting the proposed section 20J(2)(a) and substituting—

“(a) 31 December of the first calendar year after the 2019 Ordinance commencement date;”.

23 In the proposed section 20ZF(2)(b)(ii), by adding “and” after “FRC;”.

23 By deleting the proposed section 20ZF(2)(c).

- 23 By deleting proposed section 20ZJ(2)(a) and substituting—
“(a) 31 December of the first calendar year after the 2019 Ordinance commencement date;”.
- 26 In the proposed section 21A(1), by deleting “who is a certified public accountant,”.
- 26 In the proposed section 21A, by adding—
“(1A) An inspector must be—
(a) a certified public accountant; or
(b) a member of an accountancy body that is a member of the International Federation of Accountants.”.
- 26 In the proposed section 21A(2), by deleting “the appointed” and substituting “an”.
- 26 In the proposed section 21B(1), by deleting “2018” and substituting “2019”.
- 26 In the proposed section 21C(1)(b), by deleting “2018” and substituting “2019”.
- 31 In the proposed section 23(1)(a), by deleting “2018” and substituting “2019”.
- 33(2) In the proposed section 24(1)(b), by deleting “2018” and substituting “2019”.
- 48 In the proposed section 37A(d), by deleting “2018” and substituting “2019”.
- 48 In the proposed section 37B(c), by deleting “2018” and substituting “2019”.
- 62 In the proposed section 50C, by adding—
“(1A) A PIE auditor must provide the HKICPA or the FRC, as the case requires, with the information or document that the HKICPA or the FRC reasonably requires for ascertaining the levy payable by the auditor.”.

- 64 By deleting subclause (7) and substituting—
“(7) Section 52(6)(a)—
Repeal
“Council, the Investigation Board”
Substitute
“FRC, an investigator”.”.
- 64 By deleting subclause (9) and substituting—
“(9) Section 52(6)(b)—
Repeal
“Council, the Investigation Board”
Substitute
“FRC, an investigator”.”.
- 75 In the proposed section 87, in the definition of *pre-amended Ordinance*,
by deleting “2018” and substituting “2019”.
- 75 In the proposed Part 7, in Division 2, in the heading, by deleting “**2018**”
and substituting “**2019**”.
- 75 In the proposed section 88, in the heading, by deleting “**2018**” and
substituting “**2019**”.
- 75 In the proposed section 88(1), by deleting “2018” and substituting
“2019”.
- 75 In the proposed section 89, in the heading, by deleting “**2018**” and
substituting “**2019**”.
- 75 In the proposed section 89(1), by deleting “2018” and substituting
“2019”.
- 75 In the proposed section 90, in the heading, by deleting “**2018**” and
substituting “**2019**”.
- 75 In the proposed section 90(1), by deleting “2018” and substituting
“2019”.

- 75 In the proposed Part 7, in Division 3, in the heading, by deleting “**2018**” and substituting “**2019**”.
- 75 In the proposed section 92, in the heading, by deleting “**2018**” and substituting “**2019**”.
- 75 In the proposed section 92(1) and (2), by deleting “2018” and substituting “2019”.
- 75 In the proposed section 93, in the heading, by deleting “**2018**” and substituting “**2019**”.
- 75 In the proposed section 93(1) and (2), by deleting “2018” (wherever appearing) and substituting “2019”.
- 78 In the proposed Schedule 2, in section 2, by deleting “who is a non-practitioner”.
- 78 In the proposed Schedule 2, in section 7(2)(a), by deleting “who is a non-practitioner or (if no non-practitioner is available for designation) a practitioner”.
- 78 In the proposed Schedule 2, in section 7(4)(a), by deleting “who is a non-practitioner or (if no non-practitioner is available for designation) a practitioner”.
- 85 In the proposed Schedule 7, by deleting section 3(1) and substituting—
- “(1) Subject to subsection (2), the levy payable by a PIE auditor for a calendar year is the sum of—
- (a) \$6,155 × N; and
- (b) 0.147% of TR,
- where—
- N = the number of PIEs for which the auditor is carrying out, as at 31 December of the preceding calendar year, an engagement specified in item 1 of Part 1 of Schedule 1A (*specified engagement*); and
- TR = the total remuneration paid to the auditor, in the preceding calendar year, by PIEs for which the auditor carried out specified engagements.”.

85

In the proposed Schedule 7, in section 3, by adding—

- “(2A) For ascertaining N and TR, the HKICPA or the FRC (as the case requires) may refer to—
- (a) the annual financial statements of the PIEs submitted to the HKEC under the Listing Rules; or
 - (b) any information or document provided by the PIE auditor to the HKICPA or the FRC under section 50C(1A).”.

New

In Part 3, in Division 1, by adding—

“89A. Section 52 amended (Council may delegate)

Section 52(1)—

Repeal

everything after “on the Council”

Substitute

“under—

- (a) this Ordinance (except section 51); or
- (b) the Financial Reporting Council Ordinance (Cap. 588).”.

Financial Reporting Council (Amendment) Bill 2018

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

Marked-up Version

[Note: This marked-up version is for general reference only. In case of doubt or discrepancy, the CSA version at Annex A shall prevail.]

Clause 1 (2)

1. Short title and commencement

- (1) This Ordinance may be cited as the Financial Reporting Council (Amendment) Ordinance 2018.
- (2) ~~This Ordinance comes into operation on 1 August 2019.~~ This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette¹.

Clause 4(13)

“(13) Section 2(1)—

~~(a) before the definition of *audit*—~~

Add

~~“2018 Amending Ordinance (《2018 年修訂條例》) means the Financial Reporting Council (Amendment) Ordinance 2018 (— of 2017);~~

~~2018 Ordinance commencement date (《2018 年條例》生效日期) means the day on which the 2018 Amending Ordinance comes into operation;”;~~

(a) before the definition of *audit*—

Add

~~“2019 Amending Ordinance (《2019 年修訂條例》) means the Financial Reporting Council (Amendment) Ordinance 2019 (of 2019);~~

¹ As stated in paragraph 11(d) of the Government’s paper to the Bills Committee on 25 October 2018 (LC Paper No. CB(1)98/18-19(03)), this CSA is proposed to allow time and flexibility for the Financial Reporting Council (“FRC”) to complete the necessary preparatory work before the commencement of the new auditor regulatory regime.

2019 Ordinance commencement date (《2019 年條例》生效日期) means the day on which the 2019 Amending Ordinance comes into operation;”²

Clause 4(13)(b)

“**transitional period** (過渡期) means the period—

~~(a) beginning on the 2018 Ordinance commencement date; and~~

~~(b) ending on 31 December 2019;~~

(a) beginning on the 2019 Ordinance commencement date; and

(b) ending on 31 December of the same year;”³

Clause 7(4)

In the proposed section 4(1):

“(1) For the purposes of this Ordinance, a PIE auditor or non-PIE auditor has committed a practice irregularity if, in relation to a PIE engagement or non-PIE engagement completed on or after the ~~2018~~ **2019** Ordinance commencement date, the auditor—”⁴

Clause 7(8)

In the proposed section 4(2):

“(2) Without prejudice to subsection (1), where the PIE auditor or non-PIE auditor is a corporate practice, the auditor has also committed a practice irregularity if, in relation to a PIE engagement or non-PIE engagement completed on or after the ~~2018—2019~~ Ordinance commencement date—”⁵

Clause 7(13)

In the proposed section 4(3):

“(3) Without prejudice to subsection (1), where the PIE auditor or non-PIE auditor is a certified public accountant (practising), the auditor has also committed a practice irregularity if, in relation to a PIE

² Taking into account the latest progress of the Bill, we expect that subject to the passage of the Bill by the Legislative Council, the Amendment Ordinance will be enacted in 2019, instead of 2018. This technical CSA is proposed to amend the two defined terms in the Bill, i.e. “2018 Amending Ordinance” and “2018 Ordinance Commencement date”, to “2019 Amending Ordinance” and “2019 Ordinance Commencement date” respectively.

³ Since the commencement date of the new regime is to be amended from “1 August 2019” to a date to be appointed by the Secretary for Financial Services and the Treasury (see footnote 1), this proposed CSA is a corresponding amendment.

⁴ See footnote 2.

⁵ See footnote 2.

engagement or non-PIE engagement completed on or after the ~~2018~~ 2019⁶ Ordinance commencement date, the auditor—”

Clause 7(14)

In the proposed section 4(4):

“(4) Without prejudice to subsection (1), where the PIE auditor or non-PIE auditor is a firm of certified public accountants (practising), the auditor has also committed a practice irregularity if, in relation to a PIE engagement or non-PIE engagement completed on or after the ~~2018-2019~~⁷ Ordinance commencement date, the auditor—”

Clause 7(16)

In the proposed section 4(5):

“(5) For the purposes of this Ordinance, a registered responsible person of a registered PIE auditor has committed a practice irregularity if, in relation to a PIE engagement completed by the auditor on or after the ~~2018-2019~~⁸ Ordinance commencement date, the person—
.....”

Clause 9⁹

“7. Composition of FRC

- (1) The FRC is to consist of the following members—
 - (a) a chairperson, who is a non-executive director of the FRC ~~and a non-practitioner;~~
 - (b) a chief executive officer, who is an executive director of the FRC; and
 - (c) at least 7 other members, who are either executive or non-executive directors of the FRC.
- ~~(2) All members of the FRC must be appointed by the Chief Executive.~~
- ~~(3) Among the members of the FRC—
 - ~~(a) the number of non-practitioners must exceed the number of practitioners; and~~~~

⁶ See footnote 2.

⁷ See footnote 2.

⁸ See footnote 2.

⁹ As stated in paragraph 11(b) of the Government’s paper to the Bills Committee on 25 October 2018 (LC Paper No. CB(1)98/18-19(03)), these CSAs to Clause 9 are proposed to amend the composition of the FRC to an “all non-practitioner” governing board so as to remove an obstacle preventing the FRC from seeking the cooperation of overseas regulators. Concurrently, to ensure there is sufficient expertise on the FRC governing board, a corresponding change is proposed to be made such that the threshold of members with “knowledge and experience in public interest entity (“PIE”) engagements” will increase from “at least two” as currently provided for in the Bill to “at least one-third” of the total number of members.

- ~~(b) the number of non-executive directors must exceed the number of executive directors.~~
- (2) All members of the FRC must be non-practitioners appointed by the Chief Executive.
- (3) Among the members of the FRC, the number of non-executive directors must exceed the number of executive directors.
- (4) Among the members of the FRC—
 - (a) at least ~~2~~ **one-third** must be appointed from among persons who appear to the Chief Executive to be suitable for appointment, because of their knowledge and experience in PIE engagements; and
 - (b) the others must be appointed

Clause 11(3)

- “(b) to oversee the HKICPA’s performance of the following functions—
 - (i) dealing with applications and other matters relating to the registration of PIE auditors;
 - (ii) establishing and maintaining the PIE auditors register;
 - (iii) setting continuing professional development requirements for registered PIE auditors; and
 - (iv) setting standards on professional ethics, and **accounting**¹⁰; auditing and assurance practices, for registered PIE auditors;”

Clause 19¹¹

“17. Financial years and estimates

- (1)
- ~~(2) The first financial year of the FRC after the commencement of the 2018 Amending Ordinance (*first financial year*)—~~
 - ~~(a) begins on the 2018 Ordinance commencement date; and~~
 - ~~(b) ends on 31 March 2021.~~
- (2) The first financial year of the FRC after the commencement of the 2019 Amending Ordinance (*first financial year*)—
 - (a) begins on the 2019 Ordinance commencement date; and
 - (b) ends on the 31 March immediately after the first anniversary of that commencement date.
- (3) The FRC must submit, for approval by the Financial Secretary, the estimates of its income and expenditure—
 - ~~(a) for the first financial year as soon as practicable after the 2018 Ordinance commencement date;~~
 - ~~(b) for the financial year after the first financial year before 31 December 2020; or~~

¹⁰ This technical CSA is proposed to rectify a clerical error.

¹¹ These proposed CSAs to Clause 19 are corresponding amendments to the change in the commencement date. See footnote 3.

- (a) for the first financial year—as soon as practicable after the 2019 Ordinance commencement date;
- (b) for the second financial year—before the 31 December immediately before the end of the first financial year; or
- (c) for any other financial year—before 31 December of the preceding financial year.”

Clause 23

“20J. Validity of registration

- (1)
- (2) If the registration application is made within the transitional period, the registration of the practice unit as a PIE auditor expires on whichever is the later of the following—
 - (a) ~~31 December 2020~~; 31 December of the first calendar year after the 2019 Ordinance commencement date;¹²
 - (b) the date described in subsection (1)(b).”

“20ZF. Decision on application

- (1)
- (2) The FRC must not grant a recognition application unless it is satisfied that-
 - (a)
 - (b) the overseas auditor specified in the application—
 - (i) is a member of an accountancy body that is a member of the International Federation of Accountants; and
 - (ii) is subject to the regulation of an overseas regulatory organization recognized by the FRC; and
 - ~~(c) an agreement of mutual or reciprocal cooperation is in force between the FRC and the overseas regulatory organization referred to in paragraph (b)(ii); and~~¹³
 - (d)”

“20ZJ. Validity of recognition

- (1)

¹² See footnote 3.

¹³ As stated in paragraph 11(a) of the Government’s paper to the Bills Committee on 25 October 2018 (LC Paper No. CB(1)98/18-19(03)), this CSA is proposed to remove an unduly restrictive statutory requirement in recognising overseas auditors by the FRC. The deletion of this requirement notwithstanding, the Government will ask the FRC to pursue mutually agreed regulatory cooperation mechanism with respective overseas regulators as far as possible. In addition, the proposed amendment will not weaken the FRC’s regulatory powers over the overseas auditors under the new regime. Taken as a whole, the regulatory measures presented in the Bill remain robust. For example, the overseas auditor concerned must be recognised by the FRC and the recognition is subject to annual renewal which means the FRC will be vested with the statutory power to reassess the eligibility of the auditor on a regular basis. In addition, the regulatory powers of the FRC for inspection, investigation and disciplinary sanction over local PIE auditors will be equally applicable to recognised overseas PIE auditors under the new regime.

- (2) If the recognition application is made within the transitional period, the recognition of the overseas auditor as a PIE auditor expires on whichever is the later of the following—
- (a) ~~31 December 2020~~; 31 December of the first calendar year after the 2019 Ordinance commencement date;¹⁴
 - (b) the day described in subsection (1)(b).”

Clause 26¹⁵

“21A. FRC may appoint inspectors

- (1) The FRC may, in writing, appoint—
- (a) an employee of the FRC; or
 - (b) with the consent of the Financial Secretary, any other person, ~~who is a certified public accountant~~, as an inspector for the purposes of this Ordinance.
- (1A) An inspector must be—
- (a) a certified public accountant; or
 - (b) a member of an accountancy body that is a member of the International Federation of Accountants.
- (2) The FRC must provide ~~the appointed~~ an inspector with a copy of the appointment.”

In the proposed section 21B(1):

- “(1) The FRC may direct an inspector to carry out an inspection in relation to the PIE engagements completed by a PIE auditor on or after the ~~2018–2019~~¹⁶ Ordinance commencement date for the purpose of ascertaining whether the auditor has complied with, or is likely to be able to comply with—
-”

In the proposed section 21C(1)(b):

- “(b) inspect, and make copies or otherwise record details of, any record or document related to the PIE engagements completed by the auditor on or after the ~~2018–2019~~¹⁷ Ordinance commencement date;”

Clause 31

In the proposed section 23(1)(a):

¹⁴ See footnote 3.

¹⁵ These technical CSAs are proposed to widen the qualification of inspectors to cover also overseas accountants. It is because the FRC’s scope of inspection under the new regime will be wider than that of the Hong Kong Institute of Certified Public Accountants (“HKICPA”) under the existing regime as the FRC will also be empowered to conduct inspection in respect of overseas auditors.

¹⁶ See footnote 2.

¹⁷ See footnote 2.

“(a) has reasonable cause to believe that a PIE auditor has carried out a PIE engagement completed on or after the ~~2018-2019~~¹⁸ Ordinance commencement date in a way that is not in the interest of the investing public or in the public interest;”

Clause 33(2)

In the proposed section 24(1)(b):

“(b) the investigation relates to a PIE engagement or non-PIE engagement completed on or after the ~~2018-2019~~¹⁹ Ordinance commencement date for a listed entity specified in subsection (2).”

Clause 48

In the proposed section 37A(d):

“(d) has, in relation to a PIE engagement completed on or after the ~~2018-2019~~²⁰ Ordinance commencement date, done an act or made an omission that, in the FRC’s opinion, is or is likely to be prejudicial to the interest of the investing public or the public interest; or”

In the proposed section 37B(c):

“(c) has, in relation to a PIE engagement completed by the auditor on or after the ~~2018-2019~~²¹ Ordinance commencement date, done an act or made an omission that, in the FRC’s opinion, is or is likely to be prejudicial to the interest of the investing public or the public interest; or”

Clause 62

“50C. Levies payable by PIE auditors

(1) A levy, calculated in accordance with section 3 of Schedule 7, is payable by a PIE auditor for a calendar year.

(1A) A PIE auditor must provide the HKICPA or the FRC, as the case requires, with the information or document that the HKICPA or the FRC reasonably requires for ascertaining the levy payable by the auditor.²²

¹⁸ See footnote 2.

¹⁹ See footnote 2.

²⁰ See footnote 2.

²¹ See footnote 2.

²² This proposed CSA is a corresponding amendment to the proposed changes in the formula of calculating the levy on PIE auditors under Clause 85 (see footnote 26 below). It is proposed to empower the HKICPA or the FRC to verify the information relating to the amount of remuneration from the auditors during the year by requesting the auditors to provide the relevant information or documents as necessary.

- (2) A PIE auditor must pay the levy—
 (a)
 (b)"

Clause 64²³

In section 52(6) of the Financial Reporting Council Ordinance (Cap. 588):

- “(6) In this section, “relevant person” means—
 (a) an informer who has given information to the ~~Council, FRC, an investigator—the Investigation Board~~ or a Review Committee with respect to an investigation under Part 3 or an enquiry under Part 4; or
 (b) a person who has assisted the ~~Council, FRC, an investigator—the Investigation Board~~ or a Review Committee with respect to such an investigation or enquiry.

Clause 75²⁴

In the proposed section 87:

“*pre-amended Ordinance* (《原有條例》) means this Ordinance as in force immediately before the ~~2018-2019~~ Ordinance commencement date.”

In the proposed Part 7, in Division 2, in the heading:

“**Division 2—Auditors Having Undertaken but Not Yet Completed PIE Engagements before ~~2018-2019~~ Ordinance Commencement Date etc.**”

In the proposed section 88, in the heading:

“**Practice units having undertaken but not yet completed PIE engagements before ~~2018-2019~~ Ordinance commencement date**”

In the proposed section 88(1):

- “(1) This section applies if a practice unit has undertaken, but not yet completed, a PIE engagement before the ~~2018-2019~~ Ordinance commencement date.”

In the proposed section 89, in the heading:

“**Persons performing functions as responsible persons before ~~2018-2019~~ Ordinance commencement date**”

²³ These technical CSAs to Clause 64 are proposed to remove “the Investigation Board” as the definition of “an investigator” already covers “the Investigation Board”.

²⁴ All proposed CSAs to Clause 75 are corresponding amendments for amending “2018” to “2019”. See footnote 2.

In the proposed section 89(1):

- “(1) This section applies if a *registered PIE auditor (provisional)* has, before the ~~2018–2019~~ Ordinance commencement date, authorized a person to carry out an activity as a responsible person of the auditor.”

In the proposed section 90, in the heading:

“Overseas auditors having undertaken but not yet completed PIE engagements before ~~2018-2019~~ Ordinance commencement date”

In the proposed section 90(1):

- “(1) This section applies if an overseas auditor has undertaken, but not yet completed, a PIE engagement for an overseas entity before the ~~2018-2019~~ Ordinance commencement date.”

In the proposed Part 7, in Division 3, in the heading:

“Division 3—Investigations Initiated before ~~2018—2019~~ Ordinance Commencement Date etc.”

In the proposed section 92, in the heading:

“Investigations initiated before ~~2018-2019~~ Ordinance commencement date”

In the proposed sections 92(1) and (2):

- “(1) This section applies to an investigation that was initiated under Part 3 of the pre-amended Ordinance before the ~~2018–2019~~ Ordinance commencement date.
- (2) The pre-amended Ordinance continues to apply in relation to the investigation as if the ~~2018 2019~~ Amending Ordinance had not been enacted.”

In the proposed section 93, in the heading:

“Investigations may be initiated in relation to audits etc. completed before ~~2018-2019~~ Ordinance commencement date”

In the proposed sections 93(1) and (2):

- “(1) An investigation may be initiated under Part 3 of the pre-amended Ordinance in relation to any audit, or the preparation of any specified report, that had been completed for a

listed entity before the ~~2018–2019~~ Ordinance commencement date, as if the ~~2018–2019~~ Amending Ordinance had not been enacted.

- (2) The pre-amended Ordinance continues to apply in relation to an investigation initiated under subsection (1) as if the ~~2018–2019~~ Amending Ordinance had not been enacted.”

Clause 78²⁵

In the proposed Schedule 2, section 2:

“2. Appointment of Deputy Chairperson

The Chief Executive may appoint an FRC member (other than the Chairperson or the Chief Executive Officer) ~~who is a non-practitioner~~ to be the Deputy Chairperson.”

In the proposed Schedule 2, section 7(2)(a):

“(2) Whether or not the Deputy Chairperson has been appointed, the Chairperson may—

- (a) designate an FRC member ~~who is a non-practitioner or (if no non-practitioner is available for designation) a practitioner~~ to act as Chairperson for any period during which both the Chairperson and the Deputy Chairperson are unable to act as Chairperson; and”

In the proposed Schedule 2, section 7(4)(a):

“(4) The Financial Secretary may—

- (a) designate an FRC member ~~who is a non-practitioner or (if no non-practitioner is available for designation) a practitioner~~ to act as Chairperson for any period during which the Chairperson is unable to perform the Chairperson’s functions; and”

Clause 85²⁶

In the proposed Schedule 7:

²⁵ These proposed CSAs to Clause 78 are corresponding amendments after we propose to change the FRC to an “all non-practitioner” governing board (see footnote 9).

²⁶ As stated in paragraph 11(c) of the Government’s paper to the Bills Committee on 25 October 2018 (LC Paper No. CB(1)98/18-19(03)), the HKICPA recently informed the Government that the profession has just reached a broad consensus on an alternative calculation basis to determine the levy on PIE auditors under the new regime. This CSA is proposed to reflect the new agreed formula and how the HKICPA and the FRC may ascertain the relevant information in calculating the levies payable by each PIE auditor.

“3. Levies payable by PIE auditors

~~(1) Subject to subsection (2), the levy payable by a PIE auditor for a calendar year is—~~

$$\$12,310 \times N$$

~~where—~~

~~N = the number of PIEs for which the auditor is carrying out, as at 31 December of the preceding calendar year, an engagement specified in item 1 of Part 1 of Schedule 1A.~~

(1) Subject to subsection (2), the levy payable by a PIE auditor for a calendar year is the sum of—

(a) $\$6,155 \times N$; and

(b) 0.147% of TR,

where—

N = the number of PIEs for which the auditor is carrying out, as at 31 December of the preceding calendar year, an engagement specified in item 1 of Part 1 of Schedule 1A (*specified engagement*); and

TR = the total remuneration paid to the auditor, in the preceding calendar year, by PIEs for which the auditor carried out specified engagements.

(2) However, if N is 0, the levy payable by the PIE auditor for the calendar year is \$2,000.

(2A) For ascertaining N and TR, the HKICPA or the FRC (as the case requires) may refer to—

(a) the annual financial statements of the PIEs submitted to the HKEC under the Listing Rules; or

(b) any information or document provided by the PIE auditor to the HKICPA or the FRC under section 50C(1A).

(3) For the purposes of subsection (1), a PIE auditor is carrying out an engagement for a PIE on a day if—

(a) the auditor undertakes the engagement on that day; or

(b) the auditor has undertaken the engagement before that day and the engagement has not been completed by that day.”

New Clause 89A²⁷

In section 52(1) of the Professional Accountants Ordinance (Cap. 50):

“(1) The Council may delegate to any person or to a committee of the Council any of the powers or duties granted to or imposed on the Council ~~under this Ordinance, other than the power to make rules under section 51.~~under—

²⁷ This technical CSA is proposed to add in the existing delegation provision in the Professional Accountants Ordinance (Cap. 50) the powers or duties granted to or imposed on the HKICPA Council pursuant to the Financial Reporting Council Ordinance (Cap. 588) (“FRCO”), as the statutory function of the HKICPA Council to perform registration of PIE auditors is provided for in the FRCO.

- (a) this Ordinance (except section 51); or
- (b) the Financial Reporting Council Ordinance (Cap. 588).”