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財經事務及庫務局
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FINANCIAL SERVICES BRANCH
FINANCIAL SERVICES AND
THE TREASURY BUREAU
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By email (hytchiu@legco.gov.hk)

25 October 2018

Clerk to Bills Committee
(Attn.: Mr Hugo Chiu)
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr Chiu,

Bills Committee on Financial Reporting Council (Amendment) Bill 2018

Follow-up to meeting on 3 July 2018

I refer to your email dated 5 July 2018. The Administration's responses are set out in **Annex** for your follow-up action.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Billy AU', written over a circular stamp.

(Billy AU)

for Secretary for Financial Services and the Treasury

c.c.

Financial Reporting Council
Department of Justice

(Attn: Ms Florence Wong)
(Attn: Ms Mabel Cheung)
Ms Carmen Chan)

Bills Committee on Financial Reporting Council (Amendment) Bill 2018 (“the Bill”)

Response to Matters Raised by Members at the Meeting on 3 July 2018

Recognition of public interest entity (“PIE”) auditors (Item 1 of the list of follow-up actions)

The number of overseas auditors approved for being the auditor of listed companies in Hong Kong in the past five years is as follows -

	As at 31 December 2014	As at 31 December 2015	As at 31 December 2016	As at 31 December 2017	As at 30 June 2018
Number of overseas auditors	19	20	18	22	20

Offence provisions in the Bill (Item 2 of the list of follow-up actions)

2. A summary of the new offence provisions introduced by the Bill is set out in the **Appendix**.

Registration and renewal of PIE auditors (Item 3 of the list of follow-up actions)

3. At present, in considering an application for registration as a certified public accountant (practising), the Hong Kong Institute of Certified Public Accountants (“HKICPA”) may obtain information from third parties for purposes such as verifying the experience and qualifications of the applicants, and consider information in the application and other relevant information available to the Institute. Sections 29A and 30 of the Professional Accountants Ordinance (Cap. 50) (“PAO”) stipulate that the HKICPA Council may approve or refuse an application for registration as certified public accountant (practising). If the HKICPA Council refuses the application, it shall inform the applicant by notice in writing of the decision of the Council and of the reasons for the refusal. The applicant may appeal to the Court of Appeal against the rejection of the registration pursuant to section 41(1) of the PAO. The applicant may also apply to the High Court for leave to seek judicial review of the HKICPA Council's decision. The above vetting and appeal procedures for registration as a certified public accountant (practising) also apply to the registration as a certified public accountant or corporate practice.

4. Under the PAO, the applicant is not automatically granted an opportunity of being heard before the HKICPA Council refuses his application. However, in processing the application, if the Institute comes across information which indicates that the applicant does not satisfy the registration requirements, it may raise enquiries to the applicant for further information or clarification. The HKICPA Council may also request the applicant to attend an interview. The registration of PIE auditors under the new regime will make reference to these existing arrangements.

Notification on the investigation of PIE auditors (Item 4 of the list of follow-up actions)

5. Under the current section 24 of the Financial Reporting Council Ordinance (Cap. 588) (“FRCO”), the Financial Reporting Council (“FRC”) must give a written notice to the Monetary Authority (“HKMA”), the Insurance Authority (“IA”), the Securities and Futures Commission (“SFC”) or the Mandatory Provident Fund Schemes Authority (“MPFA”), as the case may be, if an investigation has been initiated in relation to a listed entity which is a regulatee of the regulator concerned. Section 29 of the FRCO further provides that an FRC investigator must not exercise the relevant investigation powers without first consulting the relevant regulator. The four organisations are financial regulators in Hong Kong. The notification and consultation arrangements help ensure that the planned investigation of the FRC will be coordinated with any enforcement action of other financial regulators where the situation so warrants. A similar consultation arrangement can be found in section 179(10) of the Securities and Futures Ordinance (Cap. 571).

6. According to the memoranda of understanding signed with the relevant financial regulators, when an investigation has been initiated in relation to a listed entity which is a regulatee of another financial regulator, the FRC will issue a written notice under section 24 of the FRCO. The notice will inform the financial regulator of the initiation of such an investigation and will set out the listed entity in question, a brief narrative of the circumstances supporting the initiation of the investigation and the powers that are exercisable by the FRC. Before the FRC exercises any investigation powers, the FRC will issue a letter to the financial regulator for the purpose of consultation pursuant to section 29 of the FRCO. In its communications under sections 24 and 29 of the FRCO, the FRC will remind the relevant financial regulator of the obligations of secrecy imposed upon it by section 51 of the FRCO. These procedures have been put in place for the implementation of sections 24 and 29 of the current FRCO and are not expected to change after the passage of the Bill.

7. Under section 51(5)(a) of the FRCO, if the FRC has, in performing any function under the Ordinance, disclosed information to a person, the person must not further disclose

the information to any other person except under the circumstances specified in section 51(6), e.g. disclosure for the purpose of seeking professional advice, disclosure in connection with any judicial or other proceedings to which it is a party, or disclosure in accordance with an order of a court, magistrate or tribunal. Hence, the HKMA, IA, SFC or MPFA, on being notified by the FRC under section 24 or 29 of an investigation in relation to a listed entity regulated by it, has a statutory obligation to keep the information confidential.

Financial Services and the Treasury Bureau

25 October 2018

Appendix

	Proposed Offences	Section(s)	Penalties
<i>Registration-related offences</i>			
1.	A person who is not a registered PIE auditor undertakes or carries out any PIE engagement.	Section 20B	<p>A person who, without reasonable excuse, contravenes section 20B, 20C, 20D or 20E commits an offence and is liable –</p> <p>(a) on conviction on indictment — to a fine of \$1,000,000 and to imprisonment for 2 years and, for a continuing offence, to a further fine of \$20,000 for each day during which the offence continues; or</p> <p>(b) on summary conviction — to a fine at level 6 (\$100,000) and to imprisonment for 6 months and, for a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.</p> <p>A fine at level 5 (\$50,000) and to imprisonment for 6 months.</p>
2.	A person who is not a registered PIE auditor holds the person out as a registered PIE auditor.	Section 20C	
3.	A person who is not a registered engagement partner of the registered PIE auditor carries out any activity as an engagement partner of the auditor.	Section 20D	
4.	A person who is not a registered engagement quality control reviewer of the registered PIE auditor carries out any activity as an engagement quality control reviewer of the auditor.	Section 20E	
5.	<p>A person, in connection with a registration application or renewal application (registration) —</p> <p>(a) makes a statement that is false or misleading in a material particular; and</p> <p>(b) knows that, or is reckless as to whether or not, the statement is false or misleading in a material particular.</p>	Section 20R(1)	
6.	<p>A person, in connection with a registration application or renewal application (registration) —</p> <p>(a) omits a material particular from a statement with the result that the statement is rendered false or misleading; and</p> <p>(b) knows that, or is reckless as to whether or not, the material particular is omitted from the statement.</p>	Section 20R(2)	

	Proposed Offences	Section(s)	Penalties
7.	A registered PIE auditor does not inform the HKICPA Council, within 7 days after the day on which it fails to meet certain registration requirements, of the failure by written notice.	Section 20X(2)	A person who, without reasonable excuse, contravenes section 20X(2) commits an offence and is liable on conviction to a fine at level 5 (\$50,000).
8.	A registered PIE auditor does not inform the HKICPA Council, within 14 days after the day on which a change in any of the specified particulars of the auditor or any of its registered responsible persons takes place, of the change by written notice.	Section 20Z(1)	A person who, without reasonable excuse, contravenes section 20Z(1) commits an offence and is liable on conviction to a fine at level 5 (\$50,000).
9.	A registered PIE auditor does not inform the HKICPA Council, within 14 days after the day on which any of the following changes takes place, of the change by written notice – (a) a registered responsible person of the auditor ceases to be a responsible person of the auditor; or (b) a person becomes or ceases to be a partner or director of the auditor.	Section 20ZA(1)	A person who, without reasonable excuse, contravenes section 20ZA(1) commits an offence and is liable on conviction to a fine at level 5 (\$50,000).
<i>Recognition-related offences</i>			
10.	An overseas auditor— (a) whose recognition application has not been granted, undertakes a PIE engagement; or (b) who is not a recognised PIE auditor, carries out a PIE engagement.	Section 20ZB	A person who, without reasonable excuse, contravenes section 20ZB or 20ZC commits an offence and is liable – (a) on conviction on indictment — to a fine of \$1,000,000 and to imprisonment for 2 years and, for a continuing offence, to a further fine of \$20,000 for each day during which the offence continues; or (b) on summary conviction — to a fine at level 6 (\$100,000) and to imprisonment for 6 months and, for a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.
11.	A person who is not a recognised PIE auditor holds itself out as a recognised PIE auditor.	Section 20ZC	

	Proposed Offences	Section(s)	Penalties
12.	A person, in connection with a recognition application or renewal application (recognition) — (a) makes a statement that is false or misleading in a material particular; and (b) knows that, or is reckless as to whether or not, the statement is false or misleading in a material particular.	Section 20ZQ(1)	A fine at level 5 (\$50,000) and to imprisonment for 6 months.
13.	A person, in connection with a recognition application or renewal application (recognition) — (a) omits a material particular from a statement with the result that the statement is rendered false or misleading; and (b) knows that, or is reckless as to whether or not, the material particular is omitted from the statement.	Section 20ZQ(2)	
14.	An overseas entity does not inform the FRC, within 14 days after the date of terminating the appointment of a recognised PIE auditor, of the termination by written notice.	Section 20ZU(2)	A person who, without reasonable excuse, contravenes section 20ZU(2) commits an offence and is liable on conviction to a fine at level 5 (\$50,000).
15.	A recognised PIE auditor does not inform the FRC, within 7 days after the day on which it fails to meet certain recognition requirements, of the failure by written notice.	Section 20ZV(2)	A person who, without reasonable excuse, contravenes section 20ZV(2) commits an offence and is liable on conviction to a fine at level 5 (\$50,000).
16.	A recognised PIE auditor does not inform the FRC, within 14 days after the day on which a change in any of the specified particulars of the auditor takes place, of the change by written notice.	Section 20ZW(1)	A person who, without reasonable excuse, contravenes section 20ZW(1) commits an offence and is liable on conviction to a fine at level 5 (\$50,000).
<i>Inspection-related offences</i>			
17.	A person fails to comply with a specified inspection requirement.	Section 21F(1)	A person who, without reasonable excuse, contravenes section 21F(1) commits an offence and is liable – (a) on conviction on indictment — to a fine of \$200,000 and to imprisonment for 1 year; or

	Proposed Offences	Section(s)	Penalties
			(b) on summary conviction — to a fine at level 5 (\$50,000) and to imprisonment for 6 months.
18.	A person — (a) in purported compliance with a specified inspection requirement, produces a record or document, or gives an answer, that is false or misleading in a material particular; and (b) knows that, or is reckless as to whether or not, the record, document or answer is false or misleading in a material particular.	Section 21F(3)	A person who commits an offence under section 21F(3) is liable – (a) on conviction on indictment — to a fine of \$1,000,000 and to imprisonment for 2 years; or (b) on summary conviction — to a fine at level 6 (\$100,000) and to imprisonment for 6 months.
19.	A person, with intent to defraud, fails to comply with a specified inspection requirement.	Section 21F(2)	A person who commits an offence under section 21F(2), (4) or (5) is liable – (a) on conviction on indictment — to a fine of \$1,000,000 and to imprisonment for 7 years; or (b) on summary conviction — to a fine at level 6 (\$100,000) and to imprisonment for 6 months.
20.	A person, with intent to defraud, produces a record or document, or gives an answer, that is false or misleading in a material particular.	Section 21F(4)	
21.	A person, with intent to defraud — (a) causes or allows another person to fail to comply with a specified inspection requirement; or (b) causes or allows another person, in purported compliance with a specified inspection requirement, to produce a record or document, or give an answer, that is false or misleading in a material particular.	Section 21F(5)	
<i>Review Tribunal-related offences</i>			
22.	A person, without reasonable excuse — (a) fails to comply with an order, notice, prohibition or requirement of the Tribunal made, given or imposed; (b) disrupts any sitting of the Tribunal or otherwise misbehaves during any sitting of the Tribunal;	Section 37U(2)	A person who commits an offence under section 37U(2) is liable – (a) on conviction on indictment — to a fine of \$1,000,000 and to imprisonment for 2 years; or (b) on summary conviction — to a fine at level 6

	Proposed Offences	Section(s)	Penalties
	<p>(c) having been required by the Tribunal to attend before the Tribunal, leaves the place where the person's attendance is so required without the Tribunal's permission;</p> <p>(d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;</p> <p>(e) threatens, insults or causes any loss to be suffered by a person who has attended before the Tribunal, on account of the attendance; or</p> <p>(f) threatens, insults or causes any loss to be suffered by the chairperson, or any other member, of the Tribunal at any time, on account of the performance of the chairperson's or member's functions.</p>		(\$100,000) and to imprisonment for 6 months.
23.	The Tribunal may punish for contempt a person who, without reasonable excuse, engages in conduct falling within section 37U(2).	Section 37X	Same powers as the Court of First Instance in punishing contempt.
24.	A person, without reasonable excuse, fails to comply with an order of the Tribunal prohibiting the publication or disclosure, wholly or partly, of a determination or costs order, or the reasons for the determination or order (if the sitting of the Tribunal, or a part of it, is held in private).	Section 37Z(4)	<p>A person who commits an offence under section 37Z(4) is liable –</p> <p>(a) on conviction on indictment — to a fine of \$1,000,000 and to imprisonment for 2 years; or</p> <p>(b) on summary conviction — to a fine at level 6 (\$100,000) and to imprisonment for 6 months.</p>