

立法會
Legislative Council

LC Paper No. CB(1)585/18-19
(These minutes have been seen
by Hon Kenneth LEUNG, the
Hong Kong Institute of
Certified Public Accountants
and the Administration)

Ref : CB1/BC/4/18

Bills Committee on Professional Accountants (Amendment) Bill 2018

**Minutes of first meeting
on Monday, 17 December 2018, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Charles Peter MOK, JP (Chairman)
Hon Starry LEE Wai-king, SBS, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon CHAN Chun-ying, JP

Member absent : Hon James TO Kun-sun

**Attendance by
Invitation** : Agenda item II

Hong Kong Institute of Certified Public Accountants

Ms Tracy WONG
Director, Admission

Mr Kenneth NG
Legal Counsel

**Public officer
attending** : Financial Services and the Treasury Bureau

Mr Billy AU
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)⁴

Clerk in attendance: Mr Desmond LAM
Chief Council Secretary (1)3

Staff in attendance: Ms Clara TAM
Assistant Legal Adviser 9

Mr Joey LO
Senior Council Secretary (1)8

Mr Terence LAM
Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)3

Miss Zoe YIP
Clerical Assistant (1)3

Action

I. Election of Chairman

Ms Starry LEE Wai-king, the Member who had the highest precedence among members of the Bills Committee present at the meeting, presided at the election of the chairman of the Bills Committee. Ms LEE invited nominations for the chairmanship of the Bills Committee.

2. Mr Charles Peter MOK was nominated by Mr Kenneth LEUNG and the nomination was seconded by Ms Alice MAK. Mr MOK accepted the nomination.

3. There being no other nomination, Mr Charles Peter MOK was elected Chairman of the Bills Committee. Mr MOK then took the chair.

4. Members agreed that it was not necessary to elect a Deputy Chairman.

II. Meeting with the Hong Kong Institute of Certified Public Accountants and the Administration

(LC Paper No. CB(3)99/18-19 -- The Bill

Action

- 3 -

- LC Paper No. CB(1)341/18-19(01) -- Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)
- LC Paper No. CB(1)338/18-19 -- Legislative Council Brief provided by Hon Kenneth LEUNG
- LC Paper No. CB(1)401/17-18(03) -- Hon Kenneth LEUNG's paper on "Background Brief on the Professional Accountants (Amendment) Bill 2018" for the meeting of the Panel on Financial Affairs on 5 January 2018
- LC Paper No. LS12/18-19 -- Legal Service Division Report
- LC Paper No. CB(1)341/18-19(02) -- Paper on Professional Accountants (Amendment) Bill 2018 prepared by the Legislative Council Secretariat (background brief)
- LC Paper No. CB(1)341/18-19(03) -- Assistant Legal Adviser's letter dated 9 November 2018 to Hon Kenneth LEUNG
- LC Paper No. CB(1)341/18-19(04) -- Hon Kenneth LEUNG's reply to Assistant Legal Adviser's letter dated 9 November 2018)

Discussion

5. The Bills Committee deliberated (Index of proceedings attached at **Annex**).

Follow-up actions to be taken by the Hong Kong Institute of Certified Public Accountants

6. The Hong Kong Institute of Certified Public Accountants ("HKICPA") was requested to provide reference information on the relevant rules and regulations or mechanisms in overseas jurisdictions governing the use of misleading descriptions by individuals, firms and companies which were not professional accountants/certified public accountants or practice units.

(Post-meeting note: The HKICPA's response was circulated to members vide LC Paper No. CB(1)452/18-19(02) on 14 January 2019.)

III. Any other business

Invitation of views

7. Members agreed to invite views on the Bill from interested parties and members of the public by placing an invitation on the website of the Legislative Council ("LegCo") and issuing invitation letters to the 18 District Councils. The Chairman drew members' attention to the proposed list of organizations to be invited to give written submissions and/or attend the next meeting to give views which was tabled at the meeting (Appendix I to LC Paper No. CB(1)365/18-19). Members noted Mr James TO's letter tabled at the meeting (Appendix II to LC Paper No. CB(1)365/18-19), and agreed to his suggestions that other relevant professional institutions, small and medium-sized accounting firms and other relevant practitioners should be invited to the meeting to express their views on the Bill. The Chairman also invited members to notify the Secretariat of any specific organizations which they wished to invite to the meeting and give views on the Bill on or before 24 December 2018.

(Post-meeting note: An invitation for public submissions on the Bill was posted on the LegCo website on 19 December 2018. Letters inviting views of the District Councils and other relevant organizations were issued on 21 and 24 December 2018, and on 2 and 3 January 2019 respectively. A total of four written submissions were received by the deadline on 14 January 2019.)

Date of next meeting

8. The Chairman said that the date of the next meeting to invite individuals/deputations to attend and give views on the Bill would be fixed in due course.

(Post-meeting note: The second meeting was scheduled for Friday, 18 January 2019.)

9. There being no other business, the meeting ended at 5:25 pm.

**Proceedings of the first meeting of
the Bills Committee on Professional Accountants (Amendment) Bill 2018
on Monday, 17 December 2018, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 000550	Ms Starry LEE Mr Kenneth LEUNG Mr Charles Peter MOK Ms Alice MAK	<u>Election of Chairman</u> Mr Charles Peter MOK was elected Chairman of the Bills Committee.	
000551 – 000717	Chairman	Opening remarks	
000718 – 001038	Chairman Mr Kenneth LEUNG	<p>Briefing by Mr Kenneth LEUNG on the background of the Professional Accountants (Amendment) Bill 2018 ("the Bill") (LC Paper Nos. CB(1)338/18-19 and CB(1)401/17-18(03)).</p> <p>Mr LEUNG said that the Bill sought to amend the Professional Accountants Ordinance (Cap. 50) ("PAO") to tighten up restrictions on the use of misleading descriptions by individuals, firms and companies that were not certified public accountants ("CPAs") or practice units registered under PAO, with a view to addressing the concerns over the increasing number of crimes involving money lending business activities by financial intermediaries operating under the name of, among others, an "accounting firm", causing the general public to believe that such intermediaries provided professional accounting services including professional accounting, professional auditing or debt restructuring services. The Bill also sought to increase the level of fine payable for certain offences under section 42(1) of PAO from level 4 (HK\$25,000) to level 5 (HK\$50,000). The proposed increase in pecuniary penalty was to reinforce the deterrent effect against the offences of using prohibited or misleading words or descriptions in a company name.</p> <p>In this regard, Mr LEUNG referred to the enquiry by the Legal Adviser to the Bills Committee in her letter (LC Paper No. CB(1)341/18-19(03)) and clarified that since the proposed increase in the level of fine payable for the offences under section 42(1) of PAO would solely apply to those related to the</p>	

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		<p>prohibited use of misleading descriptions by individuals, firms and companies that were not CPAs or practice units, he agreed that in order to enhance clarity of the legislative intent of the Bill, he would propose amendments to the Bill to that effect.</p> <p>Mr LEUNG also said that when he briefed the Panel on Financial Affairs at the meetings on 6 June and 15 November 2016, some members had raised concern about the impacts of the Bill on small firms providing accounting, company or bookkeeping services. As such, he had sought the Competition Commission's views on the Bill. The Commission considered that the Bill did not raise any competition concerns, and was of the view that the modest restriction on competition imposed by the Bill appeared to be outweighed by the need to protect the public from being misled about the qualifications of companies providing accounting services. Mr LEUNG added that there would be an adaptation period of about one year to allow such firms to make preparations for the implementation of the legislative amendments if the Bill was passed.</p>	
001039 – 001213	Chairman HKICPA	<p>Briefing by Director, Admission of HKICPA ("D/HKICPA") on the consultation among members of HKICPA on the Bill. She said that HKICPA had discussed with members of its relevant committee the content of the Bill and agreed to tighten up restrictions on the use of misleading descriptions such as "professional accounting", "registered accounting", "certified accounting", etc., which might reasonably cause any person to believe that the companies using such descriptions were practice units qualified to provide auditing services under PAO. The Bill was unanimously supported by members of HKICPA at its annual general meeting held on 14 December 2017.</p>	
001214 – 001347	Chairman Administration	<p>Briefing by Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) 4 on the Administration's views on the Bill. He said that –</p> <p>(a) currently it was an offence under section</p>	

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		<p>42(1)(ha) of PAO for a company not being a corporate practice to use descriptions "certified public accountant (practising)" or "public accountant"; the initials "CPA (practising)", "PA", or the characters "執業會計師", "註冊核數師", "核數師" or "審計師", in its name in connection with its business. It was also an offence for a company not being a corporate practice to use the descriptions "certified public accountant", the initials "CPA" or the characters "會計師" with the intention of causing, or in a way which might reasonably cause a person to believe that it was a practice unit; and</p> <p>(b) the legislative intent of the Bill aligned with the Administration's policy to prohibit any body corporate or individual from using misleading descriptions with the intention to cause any person to believe that the body corporate or individual was a "certified public accountant", "CPA" or "會計師" or a practice unit registered under PAO.</p>	
001348 – 002131	Chairman Mr CHAN Chun-ying HKICPA Administration Mr Kenneth LEUNG	Mr CHAN Chun-ying expressed concern about the impact of the Bill on small accounting firms, in particular, whether the proposed restriction would be too stringent that small accounting firms providing bookkeeping services might not be able to continue their business after passage of the Bill, as most of them were not practice units registered with HKICPA but had been using descriptions such as "專業會計" in their company names. He enquired how the Bill could balance the need to prohibit misleading descriptions without jeopardizing the survival of such small accounting firms. He agreed to Mr James TO's suggestion in his letter to the Bills Committee dated 17 December 2018 (Appendix II to LC Paper No. CB(1)365/18-19) that the Bills Committee should receive public views on the Bill, and should invite, inter alia, small and medium-sized accounting firms providing accounting services to the meeting to give views on the Bill.	

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		<p>D/HKICPA advised that –</p> <ul style="list-style-type: none"> (a) the existing provisions under section 42(1) of PAO prohibited any individual which was not a CPA or a body corporate not being a practice unit registered under PAO from providing auditing services, and using the specified descriptions "certified public accountant", "CPA" or "會計師" in its name; (b) the Bill aimed to prohibit any body corporate not being a registered practice unit from using, in addition to the above specified descriptions, other misleading descriptions including "professional accountant", "certified accountant", "registered accountant", "professional accounting", "registered accounting", "certified public accounting" or "certified accounting", with the intention to cause any person to believe that the body corporate was a practice unit registered under PAO which could lawfully provide professional auditing services under PAO; and (c) small firms providing bookkeeping services without the intention to mislead anyone that they could lawfully provide auditing services was unlikely to contravene PAO after passage of the Bill. <p>The Administration advised that as discussed at the meeting of the Panel on Financial Affairs on 5 January 2018, the Bill would prohibit the use of a number of additional specified descriptions, characters or initials which might have an impact on firms which were using these descriptions, characters or initials in their names, as these firms would have to change their names after the passage of the Bill. The Administration had suggested at the meeting that Mr Kenneth LEUNG should consider consulting the businesses being affected so that they could reflect their views timely.</p> <p>Mr LEUNG agreed that public views on the Bill should be invited, and in particular, small firms providing bookkeeping, taxation and</p>	

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		<p>company secretarial services should be invited to give their views on the Bill. He stressed that the Bill would not affect the business operation of such small firms provided that they did not use the specified misleading descriptions in their names and without the intention to mislead anyone that they were providing "professional accounting services".</p>	
<p>002132 – 002749</p>	<p>Chairman Ms Alice MAK Mr Kenneth LEUNG Administration</p>	<p>Ms Alice MAK said that since 2014, she had received 294 cases concerning illegal activities by financial intermediaries involving a total sum of over HK\$400 million. In the majority of these cases, financial intermediaries had used descriptions in their names including "accountant", "professional accountant", "global accountant" and "international accountant". She agreed that to certain extent, the Bill would help the general public to differentiate genuine and professional accounting firms from the fake ones. However, the Bill would not prohibit small firms providing bookkeeping services from using generic terms including "accountant". The Administration should step up promotion to raise public awareness of the legislative amendments if the Bill was passed. She said that it was important to put in place a registration or licensing system for financial intermediaries.</p> <p>Mr Kenneth LEUNG said that he had explored with HKICPA on whether restrictions should be made on the use of the description "accountant". He however said that there would be a limit to which restrictions could be made on the use of such a description. He referred to the practice in Canada in which the description "accountant" could be freely used by members of the public, whereas the use of the description "professional accountant" was restricted. He agreed that the concerted effort of the Administration, HKICPA and himself was necessary in educating members of the public to refrain from engaging the services of financial intermediaries under the guise of offering financial assessment services to clients.</p> <p>The Administration advised that it would</p>	

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		continue to communicate with the relevant stakeholders and Legislative Council Members on the issue of financial intermediaries.	
002750 – 003409	Chairman Mr CHAN Chun-ying Mr Kenneth LEUNG HKICPA	<p>The Chairman and Mr CHAN Chun-ying enquired how the proposed legislative amendments to PAO under the Bill could serve the purpose of preventing companies from using misleading descriptions with intent. The Chairman further enquired how the proposed legislative amendments would be enforced.</p> <p>Mr Kenneth LEUNG said that –</p> <ul style="list-style-type: none"> (a) existing laws governing the offence of fraud already prohibited companies from using misleading descriptions with intent. The Bill aimed to balance the protection of the interests of the public and the survival of small firms providing legitimate services such as bookkeeping or company secretarial services; and (b) among some 1.4 million registered companies in Hong Kong, there were only about 80 companies (which were non-HKICPA registered practice units) in which the company name had included the descriptions which were proposed to be restricted for use under the Bill. <p>D/HKICPA advised that –</p> <ul style="list-style-type: none"> (a) in order to use the descriptions of "certified public accountant", "CPA" or "會計師" in its name, a body corporate must be registered as a practice unit with HKICPA, and a practice unit could only be registered by members of HKICPA holding valid practising certificates; and (b) HKICPA would act on complaints about malpractices in the profession. While registered members of HKICPA would be disciplined if found guilty of professional misconduct, HKICPA would refer criminal offences involving non-members to the Police for investigation. 	

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003410 – 004826	Chairman Ms Starry LEE Mr Kenneth LEUNG HKICPA	<p>Ms Starry LEE said that quite a lot of individuals with different levels of accounting training and qualifications who were not registered members of HKICPA had been providing accounting-related services such as bookkeeping in the market. It would be very difficult to classify these individuals as those who were not providing "professional" services. She was of the view that small accounting firms should also be invited to attend the meeting to give their views on the Bill. She also sought clarification on whether a body corporate which was a non-HKICPA practice unit who identified itself as a non-HKICPA member to its clients would be allowed to use the description "professional accounting" in its name or refer its clients to a professional accounting or auditing service provider.</p> <p>Mr Kenneth LEUNG and D/HKICPA advised that it would be permissible under the proposed amendments for body corporates which were non-HKICPA practice units to provide taxation or bookkeeping services as long as these were unrelated to professional auditing services. D/HKICPA added that it would be unlikely to refer the complaints against such body corporates to the Police if they did not have the intention to mislead any person into believing that they were practice units qualified to provide auditing services under PAO. Whether such complaints were substantiated would be subject to the admissibility of relevant evidence.</p> <p>Ms LEE suggested that registered members of HKICPA be required to have their membership numbers printed on their business cards and/or display their practicing certificates at a prominent position of their offices. Ms LEE was of the view that the arrangement might help the general public identify "certified" accountants from "non-certified" ones, and would also help identify companies which were practice units qualified to provide professional auditing service under PAO.</p> <p>D/HKICPA advised that –</p>	

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		<p>(a) the existing provisions under PAO did not mandate HKICPA-registered members or practice units to the requirement of displaying their membership numbers or practicing certificates; and</p> <p>(b) whether a certain individual or company was a registered HKICPA member or practice unit could be ascertained from the membership list and the Hong Kong CPA Practice Directory, which were available on the HKICPA website.</p> <p>Mr LEUNG said that he had previously suggested to HKICPA that it should require, by means of a Practice Note, its members to have their membership numbers printed on their name cards and/or display their practicing certificates at a prominent position of their offices.</p> <p>The Chairman agreed that members' suggestion would help the enforcement agencies to prove whether an intention to mislead was involved.</p> <p>D/HKICPA advised that it had previously discussed Mr LEUNG's suggestion and was of the view that the above requirement could be adopted by way of legislative amendments to PAO. This would be taken into account in the on-going review of PAO. Another option to follow up the suggestion was to introduce amendments to the Code of Ethics for Professional Accountants issued by HKICPA. HKICPA agreed to follow up members' suggestion.</p>	
004827 – 005432	Chairman Mr CHAN Chun-ying Mr Kenneth LEUNG Ms Starry LEE HKICPA	Mr CHAN Chun-ying said that many cases of malpractices quoted by Ms Alice MAK involved only the use of the description "accountant" rather than "professional accountant" or "certified accountant". As such, even if the proposed amendments to PAO were passed, the amended PAO might still not be able to prohibit such malpractices. He agreed with the suggestion of requiring HKICPA members to display their practicing certificates and membership numbers.	

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		<p>Mr Kenneth LEUNG said that the proposed requirement would not be covered under the Bill due to the scope of its Long Title and the need for further consultation. He suggested that HKICPA should first introduce the relevant requirement in a Practice Note to familiarize its members and the general public with the detailed arrangement. He might then consider introducing another Member's Bill to take forward the proposed requirement in future.</p>	
<p>005433 – 005740</p>	<p>Chairman Ms Starry LEE Mr Kenneth LEUNG HKICPA</p>	<p>Ms Starry LEE enquired about the related practices in overseas jurisdictions.</p> <p>Mr Kenneth LEUNG advised that many common law jurisdictions adopted the concept of "registered auditor". As the professional qualification framework varied from country to country and region to region, it would be difficult to make a comparison between Hong Kong and other jurisdictions.</p> <p>D/HKICPA advised that –</p> <ul style="list-style-type: none"> (a) the concept of CPA was adopted in the United States, Canada and Australia where the description "CPA" could only be used in the titles by members of the relevant professional accountancy bodies; (b) in the United Kingdom and Australia, the concept of "chartered accountant" was also adopted; and (c) in Hong Kong, the exclusive use of the description "professional accountant" by HKICPA members was adopted since 1973 when PAO was enacted. In 2004, the exclusive use of the description "certified public accountant" (in addition to the description "professional accountant") by HKICPA members was subsequently adopted due to the change in the statutory designation of its members. 	<p>HKICPA to follow up as per paragraph 6.</p>

Time marker	Speaker	Subject(s)	Action required
005741 – 005920	Chairman	Invitation for public views on the Bill. Meeting arrangement.	

Council Business Division 1
Legislative Council Secretariat
15 February 2019