

立法會
Legislative Council

LC Paper No. CB(1)1065/18-19
(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 fourth meeting
on Monday, 11 March 2019, at 5:00 pm
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon Charles Peter MOK, JP (Chairman)
Hon James TO Kun-sun
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon CHAN Chun-ying, JP

Member absent : Hon Starry LEE Wai-king, SBS, JP

**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

Miss Zoe YIP
Clerical Assistant (1)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)666/18-19 -- Minutes of meeting held on
18 January 2019)

The minutes of meeting held on 18 January 2019 were confirmed.

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

(LC Paper No. CB(1)665/18-19(01) -- List of follow-up actions arising
from the discussion at the meeting
on 22 February 2019

LC Paper No. CB(1)665/18-19(02) -- Hon Kenneth LEUNG's response
to issues raised at the meeting on
22 February 2019)

Draft amendments to the Bill

(LC Paper No. CB(1)474/18-19(01) -- Draft amendments proposed by
Hon Kenneth LEUNG

LC Paper No. CB(1)480/18-19(01) -- Hong Kong Institute of Certified
Public Accountants' response to
the draft amendments proposed by
Hon Kenneth LEUNG

LC Paper No. CB(1)591/18-19(07) -- Administration's response to the draft amendments proposed by Hon Kenneth LEUNG)

Relevant papers

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

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)

(issued vide LC Paper No. CB(1)338/18-19 on 14 December 2018) -- 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)

Disclosure of pecuniary interest

2. The Chairman drew members' attention to Rule 83A of the Rules of Procedure which provided that members should not speak on a matter in which

they had a direct or indirect pecuniary interest, except where they disclosed the nature of that interest.

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

III. Any other business

Legislative timetable

4. The Chairman said that the Bills Committee had completed the scrutiny of the Bill and raised no objection to the draft amendments to the Bill proposed by Mr Kenneth LEUNG, Member in charge of the Bill. The Administration and the Bills Committee would not propose amendments to the Bill. The Bills Committee raised no objection to Mr Kenneth LEUNG's intention to resume the Second Reading debate on the Bill at the Council meeting of 3 April 2019. The Chairman informed members that the Bills Committee would submit a written report to the House Committee for consideration at the meeting on 22 March 2019. He also reminded members that the deadline for giving notice to move amendments to the Bill was 25 March 2019.

(Post-meeting note: The resumption of the Second Reading debate on the Bill was not dealt with at the Council meeting of 3 April 2019. The Bills Committee noted in Mr Kenneth LEUNG's letter dated 8 April 2019 (LC Paper No. CB(1)861/18-19(01)) that he intended to give fresh notices to resume the Second Reading debate on the Bill and to move his proposed amendments to the Bill at the Council meeting of 8 May 2019. The Bills Committee also noted that Mr LEUNG's proposed amendments were the same as those permitted by the President of the Legislative Council for moving at the Council meeting of 3 April 2019. Subsequently, the Bills Committee noted Mr LEUNG's withdrawal of his notice to resume the Second Reading debate on the Bill at the Council meeting of 8 May 2019 (LC Paper No. CB(1)944/18-19).)

5. There being no other business, the meeting ended at 5:59 pm.

**Proceedings of the fourth meeting of
the Bills Committee on Professional Accountants (Amendment) Bill 2018
on Monday, 11 March 2019, at 5:00 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item II – Meeting with the Hong Kong Institute of Certified Public Accountants and the Administration			
000000 – 000513	Chairman	Opening remarks.	
000514 – 001156	Chairman Mr Kenneth LEUNG	Briefing by Mr Kenneth LEUNG on his responses to issues raised at the meeting on 22 February 2019 (LC Paper No. CB(1)665/18-19(02)).	
001157 – 001307	Chairman Director, Admission of Hong Kong Institute of Certified Public Accountants ("D/HKICPA")	D/HKICPA referred to Mr Kenneth LEUNG's responses and clarified that under the Professional Accountants Ordinance (Cap. 50) ("PAO"), the description "certified public accountant" ("CPA") was rendered as "會計師" in Chinese, whereas a CPA holding a practising certificate would be entitled to use the designation "certified public accountant (practising)" ("CPA (practising)") which was rendered as "執業會計師" in Chinese.	
001308 – 002101	Chairman Mr James TO	Mr James TO said that he did not agree with Mr Kenneth LEUNG's view that many people in Hong Kong inclined to regard "professional accountant" in English (which was a restricted term under PAO) as an equivalent of the Chinese characters "專業會計". Mr TO said that it was unfair to restrict the use of the characters "專業會計" to members of the Hong Kong Institute of Certified Public Accountants ("HKICPA") only, given the characters could have multiple meanings in both Chinese and English. It was beyond reason to assume that ordinary people would regard "professional accountant" as the English translation of the characters "專業會計".	
002102 – 002259	Chairman Mr Kenneth LEUNG	In response to Mr James TO's concern, Mr Kenneth LEUNG said that the characters "會計" in Chinese had by convention been taken to refer to a profession. PAO did not restrict the use of the term "accountant" which was generic and did not have a corresponding Chinese rendering under the Laws of Hong Kong. In general usage, "accountant" could be rendered as	

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		<p>"會計" or "會計師". However, the characters "會計師" which were already restricted for use under PAO did not have a corresponding English translation under the Laws of Hong Kong.</p>	
002300 – 002525	<p>Chairman Mr James TO Mr CHAN Chun-ying</p>	<p>While Mr James TO and Mr CHAN Chun-ying agreed that "會計" had sometimes been taken to refer to a profession, they opined that if "專業會計" was restricted, a person or body corporate purporting to provide "專業會計服務" or "professional accounting services" (which would definitely not be taken as the profession of accountant), or describing himself as "專業會計人員" or "professional accounting personnel" would still be affected by the proposed restriction for use of certain descriptions. Mr TO considered the proposed restriction unnecessary.</p>	
002526 – 003117	<p>Chairman Mr James TO D/HKICPA Mr Kenneth LEUNG Mr CHAN Chun-ying Assistant Legal Adviser 9 ("ALA9")</p>	<p>Mr James TO said that as PAO already prohibited the use of the description "professional accountant" or the characters "專業會計師", the proposed restriction of the characters "專業會計" was tantamount to monopolizing the use of the term by CPAs or practice units registered with HKICPA, which in his view was excessive and unfair. In order to prevent further misleading cases from happening, it should be the responsibilities of HKICPA to refer as many suspected cases as possible to the enforcement agencies, and of the enforcement agencies to step up effort in investigation and prosecution.</p> <p>Mr TO considered that if the use of the characters "專業會計" with the intention to mislead had been so rampant that those who were not members of HKICPA should be deterred from using such characters in their names, HKICPA should have referred relevant suspected cases to the Police for investigation and see if the offenders could be convicted under the existing PAO. In the absence of such test cases as useful reference, Mr TO did not find sufficient evidence of the existence of loopholes under the existing PAO which could lead to unsuccessful prosecutions and hence warrant the proposed amendments to PAO under the Bill.</p>	

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		<p>D/HKICPA said that HKICPA was unable to refer cases to the Police involving the use of the misleading descriptions "professional accounting" and the characters "專業會計" which were currently not prohibited for use by non-HKICPA members or non-practice units in their names under PAO.</p> <p>The Chairman quoted the Administration's response to issues raised at the meeting on 18 January 2019 (LC Paper No. CB(1)591/18-19(04)) which stated that the Department of Justice ("DoJ") did not maintain any records on the number of court cases instituted pursuant to section 42 of PAO.</p> <p>Mr TO, however, opined that in determining whether a case should be referred to the Police for investigation, HKICPA should consider all the facts of the case in their totality to establish the intention to mislead, and not just the fact that certain specified descriptions had been used by individuals or body corporates in their names. In the event that DoJ did not agree that the persons concerned could be prosecuted, it would then be the decision of DoJ to provide reasons. Similarly, in the event that the persons concerned were prosecuted but the court had ruled that a conviction could not be made, the court would provide reasons for its ruling. In both scenarios, light would be shed on whether loopholes actually existed in the current PAO and appropriate legislative amendments should be made.</p> <p>Mr Kenneth LEUNG said that if the characters "專業會計" were to be deleted from the specified descriptions, it would become pointless to introduce the Bill, the aim of which was to prohibit the use of the descriptions, among others, by individuals or body corporates to mislead the public into believing that they were CPAs or practice units registered with HKICPA.</p> <p>In response to the Chairman's enquiry, ALA9 took the view that it would be a contravention of PAO for a person or body corporate to use or incorporate as part of its name the characters "專業會計" with an intention to mislead if the Bill was passed.</p>	

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		<p>Mr TO said that if Mr LEUNG insisted on his proposal to prohibit the use of the characters "專業會計", he would consider proposing amendments to the Bill to delete the description "professional accounting" and/or the characters "專業會計" from those additional specified descriptions proposed in the Bill. If his amendments were not supported by Members at the Council meeting, he would have no choice but to vote against the Bill.</p> <p>Mr CHAN Chun-ying suggested that for the avoidance of doubt, an amendment might be proposed to the Bill to the effect that it would not constitute an offence under PAO if individuals or body corporates only used in their names the description "professional accounting" or the characters "專業會計" without the intention to mislead any person into believing that they were CPAs or practice units registered under PAO.</p>	
<p><i>Clause-by-clause examination of the Bill</i> [The Bill (LC Paper No. CB(3)99/18-19)] [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)341/18-19(01))]</p>			
003118 – 003451	Chairman Mr Kenneth LEUNG	<p>Mr Kenneth LEUNG took members through the English version of the Bill clause by clause.</p> <p><u>Long title</u></p> <p>Referring to his proposed amendments vide LC Paper No. CB(1)474/18-19(01), Mr LEUNG said that he would propose a technical amendment to the long title to reflect that the Bill also included an amendment for other related purpose (i.e. the proposed amendment to section 42(1)(ii) of PAO).</p> <p><u>Clause 1 – Short title</u></p> <p>Referring to his proposed amendments vide LC Paper No. CB(1)474/18-19(01), Mr LEUNG said that to allow sufficient time for publicizing the details of the Bill and for the relevant firms to make preparations for the implementation of the Bill, he would propose an amendment to Clause 1 of the Bill to add a provision specifying 1 January 2020 as the commencement date of the Bill.</p>	

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		<p><u>Clause 2 – Professional Accountants Ordinance amended</u></p> <p>Members raised no query.</p>	
003452 – 010033	<p>Chairman Mr James TO Mr Kenneth LEUNG ALA9 D/HKICPA Legal Counsel of Hong Kong Institute of Certified Public Accountants ("LC/HKICPA")</p>	<p><u>Clause 3 – Section 42 amended (offences and penalties)</u></p> <p><i>Proposed new section 42(1)(iaa)</i></p> <p>In response to the Chairman's enquiry, D/HKICPA advised that under section 28A of PAO, a firm of CPA (practising) should not be qualified for registration under subsection (2) unless all partners of the firm were CPAs and at least such proportion as the Council of HKICPA might from time to time prescribe of its partners (currently two-thirds) were CPAs (practising).</p> <p>ALA9 sought clarification on the rationale for the exclusion of "a sole proprietorship of a CPA" in the proposed section 42(1)(iaa).</p> <p>In response, LC/HKICPA advised that for a sole proprietorship of a CPA, matters governed under section 28A regarding partnership would not arise and hence it was excluded under the proposed new section 42(1)(iaa).</p> <p><i>Sections 42(1)(i) and (ii) amended</i></p> <p>Referring to his proposed amendments vide LC Paper No. CB(1)474/18-19(01), Mr Kenneth LEUNG advised that he would propose amendments to Clause 3 of the Bill to the effect that the proposed increase in the level of fine would be restricted to those offences which were related to the use of misleading descriptions.</p> <p>Members and ALA9 raised no query on the Chinese version of the Bill, the drafting of which was taken to be in order.</p>	
010034 – 010123	Chairman	<p>The Chairman concluded that the Bills Committee had completed the scrutiny of the Bill and that no further meeting of the Bills Committee would be held.</p>	

Time marker	Speaker	Subject(s)	Action required
010124 – 010255	Chairman	Legislative timetable.	

Council Business Division 1
Legislative Council Secretariat
15 May 2019