

立法會

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Bills Committee on Professional Accountants (Amendment) Bill 2018

Background brief

Purpose

This paper provides background information on the Professional Accountants (Amendment) Bill 2018 ("the Bill") which is a Member's bill presented by Hon Kenneth LEUNG. It also summarizes the major views and concerns expressed by members of the Panel on Financial Affairs ("the Panel") on the relevant proposed legislative amendments to the Professional Accountants Ordinance (Cap. 50) ("PAO").

Background

2. Section 42(1) of PAO provides, among others, that an individual who is not a certified public accountant ("CPA") or a body corporate¹ or a firm not being a practice unit registered under PAO is prohibited to use in connection with their business, trade, calling, profession or in their names certain specified descriptions. The prohibited descriptions include "certified public accountant", the initials "CPA" or the characters "會計師" or any words, initials or abbreviations of words with the intention of causing, or in a way which may reasonably cause, a person to believe that they are CPAs or practice units registered under PAO.

3. It is an offence to do any of the prohibited acts under section 42(1) (except section 42(1)(l))² of PAO which is punishable by a fine at level 4 (HK\$25,000) and imprisonment of 12 months in the case of an individual, and by a fine at level 4 in the case of a firm of CPAs or a body corporate.

4. According to Hon Kenneth LEUNG, notwithstanding that section 42 of PAO has already prohibited, among other things, a company not being a corporate

¹ The prohibition in relation to the use of specified descriptions by a body corporate not being a practice unit registered under the Professional Accountants Ordinance (Cap. 50) ("PAO") was added by the Professional Accountants (Amendment) Ordinance 2013.

² A fine at level 2 for the offences under section 42(1)(l) of PAO.

practice to use in its name certain written words or descriptions etc. which may reasonably cause any person to believe that it is a practice unit registered under PAO, it is observed that some companies which are not a corporate practice have been using in their names terms such as "Professional Accounting Services", "Professional Accounting and Secretary", "Professional Accounting and Secretarial Services", or "Professional Accounting and Taxation". Such terms might cause confusion and lead the public to believe that such companies are practice units qualified to provide professional accounting service under PAO. For instance, some unscrupulous financial intermediaries have been operating under misleading names, including "accounting firms", in conducting business relating to money lending.

5. The Bill is therefore introduced to address concerns about crimes involving financial intermediaries operating under the name of, among others, an "accounting firm" and to enable the general public to identify whether an individual or a company is qualified to provide professional accounting and auditing service under PAO.

Professional Accountants (Amendment) Bill 2018

6. Being a Member's bill introduced by Hon Kenneth LEUNG with the consent of the Chief Executive, the Bill was published in the Gazette on 2 November 2018 and received its First Reading at the Council meeting of 14 November 2018. The object of the Bill is to amend PAO to tighten up restrictions on the use of misleading descriptions by individuals, firms and companies that are not CPAs or practice units registered under PAO. The Bill also seeks 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).

7. The main provisions of the Bill are explained in paragraph 7 of the Legal Service Division ("LSD") Report on the Bill (LC Paper No. LS12/18-19). A list of specified descriptions under the existing PAO and additional descriptions proposed in the Bill is set out in the Annex to the said LSD Report. The Bill, if passed, would come into operation on the day when it is published in the Gazette.

Major views and concerns expressed by members of the Panel on Financial Affairs

8. Hon Kenneth LEUNG consulted the Panel on his relevant legislative proposal at the meetings on 6 June and 15 November 2016 and 5 January 2018 respectively. The deliberations and concerns of members are summarized in the ensuing paragraphs.

Impact on small accounting firms

9. At the meetings on 6 June and 15 November 2016, members were concerned that the proposed restrictions might be too stringent that small firms providing bookkeeping services might not continue their businesses after passage of the proposed legislative amendments to PAO, as most of them were not practice units registered with the Hong Kong Institute of Certified Public Accountants ("HKICPA") but had been using words such as "專業會計" in their company names.

10. Hon Kenneth LEUNG stressed that there was no intention to prohibit small firms from providing accounting or bookkeeping services. He clarified that the proposed legislative amendments aimed to tighten the usage of the term "Certified Public Accountant" such that unqualified companies/persons could not use names like "專業會計" in business names with an attempt to mislead the public to believe that they were persons or practice units qualified to provide professional accounting or auditing service under PAO. The Competition Commission had confirmed on 28 August 2017 that it did not consider the Bill to have raised any competition concerns.

11. Hon Kenneth LEUNG and HKICPA also advised that the restrictions to be imposed under the proposed legislative amendments would apply to an entity not being a member of or a practice unit registered with HKICPA. Such an entity could be an individual, a partnership, or a company.

Enforcement actions

12. At the meeting on 5 January 2018, members enquired about the law enforcement actions and the sanctions (particularly whether the penalty imposed included imprisonment) against an unqualified entity using specified descriptions set out in the Bill. They also sought details on HKICPA's handling of non-criminal cases.

13. HKICPA advised that it had, in the past four years, referred a total of 44 cases concerning illegal use of terms relating to the accounting profession to the Police, which was responsible for enforcement against offences set out in the Bill and would first advise the entity to stop using the description concerned before taking any further actions. According to HKICPA's understanding, the Police had successfully prosecuted nine cases, and was conducting investigations on five cases. HKICPA was not aware of any convicted cases resulting in penalty of imprisonment. For non-criminal cases, the entity concerned would usually take remedial actions upon the advice of HKICPA.

Qualified accountants in other jurisdictions in carrying on business in Hong Kong

14. At the same meeting, some members sought clarification on whether

qualified accountants in other jurisdictions would be prohibited, after enactment of the Bill, from using the term "professional accountant" or "專業會計師" in carrying out business in Hong Kong unless they were members of HKICPA.

15. HKICPA advised that under the existing PAO, a person could not use the term "professional accountant" or "會計師" in carrying on business in Hong Kong unless he/she was a member of HKICPA. Nevertheless, the use of generic terms including "accountant" was allowed. Besides, a person could use the full title of the accountancy qualification obtained in another jurisdiction which typically would include the country name of the relevant accountancy body.

Latest development

16. At the House Committee meeting held on 16 November 2018, Members agreed to form a Bills Committee to study the Bill.

Relevant papers

17. A list of relevant papers is in **Appendix**.

List of relevant papers

Date of meeting	Meeting	Paper
6/6/2016	Panel on Financial Affairs	Letter dated 20 May 2016 from Hon Kenneth LEUNG attaching a draft Professional Accountants (Amendment) Bill 2016 and the background information (English version only) (LC Paper No. CB(1)987/15-16(02)) Minutes of meeting (LC Paper No. CB(1)1162/15-16)
15/11/2016	Panel on Financial Affairs	Background brief and the draft Professional Accountants (Amendment) Bill 2016 provided by Hon Kenneth LEUNG (English version only) (LC Paper No. CB(1)78/16-17(02)) Minutes of meeting (LC Paper No. CB(1)364/16-17)
5/1/2018	Panel on Financial Affairs	Background brief and the draft Professional Accountants (Amendment) Bill 2018 provided by Hon Kenneth LEUNG (English version only) (LC Paper No. CB(1)401/17-18(03)) Minutes of meeting (LC Paper No. CB(1)727/17-18)
2/11/2018 (date of gazette)	Professional Accountants (Amendment) Bill 2018	Professional Accountants (Amendment) Bill 2018
16/11/2018	House Committee	Legal Service Division Report on Professional Accountants (Amendment) Bill 2018 (LC Paper No. LS12/18-19)