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19 February 2019

Mr Desmond Lam
Clerk to Bills Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Lam

Bills Committee on Professional Accountants (Amendment) Bill 2018
Follow-up to meeting on 18 January 2019

I refer to your letter dated 24 January 2019. My responses to the items on the list of follow-up actions are set out in Annex A.

Yours sincerely,

Kenneth Leung

Encls.

Bills Committee on Professional Accountants (Amendment) Bill 2018 (the “Bill”)

**The Hon Kenneth Leung’s Responses to Matters Raised at the Meeting on 18
January 2019**

The Bill aims to give adequate protection to members of the public who use the services of professional accountants for audit work and other types of work.

The Hong Kong Institute of Certified Public Accountants (the “**Institute**”) currently (as at January 2019) has 43,573 members and 19,148 students. It is the largest professional body in Hong Kong. 4,852 members hold practising certificate who can perform statutory audit work. 38,721 are non-practising members who may be providing other services including but not limited to financial accounting, management accounting, financial management, corporate services and taxation.

To become a member of the Institute, an individual must, amongst other things, pass the Qualification Programme which is made up of four 3-hour exam modules with workshops (financial reporting, corporate financing, business assurance and taxation) and a 6-hour final examination, and obtain relevant practical experience under an authorized employer or supervisor for at least 3 years. The individual will be admitted as a member after satisfying that the individual is a fit and proper person to be a certified public accountant. In order to maintain membership of the Institute a member will need to complete at least 120 continuing professional development hours over a 3-year period. Members are required to perform his work in accordance with the professional standards and guidelines issued by the Institute.

In order to obtain a practising certificate an individual, apart from satisfying the requirement to become a member, must have not less than 4 years of full-time approved accounting experience, and if they have not completed the Qualification Programme, must pass examinations in local law, business assurance and taxation. The Professional Accountants Ordinance (the “**PAO**”) provides that the issue of a practising certificate shall expire on 31 December each year and is re-issued annually on application.

1) Response to concerns raised at the last meeting

- a) **Concerns whether the Bill will upon its passage hinder body corporates carrying out businesses such as bookkeeping, taxation, company secretary or consultancy services.**

The Bill provides that, any body corporate or firm who uses in its name the prohibited descriptions or characters must also be proven to have the intention to mislead, or in a way which may reasonably cause, someone to believe that it is a practice unit registered under the PAO before an offence is committed. The presence of intention is important for a successful prosecution under sections 42(1)(ha)(iv) and 42(1)(iaa).

According to the Institute, section 42 of the PAO is enforced by the Police Department and complaints received by the Institute are referred to the Police for handling. In the first meeting of this Bills Committee on 17 December 2018, the Institute stated they would be unlikely to refer the complaints against a body corporate or firm which uses the description "professional accounting" in its name to the Police if the body corporate or firm did not have the intention to mislead or reasonably cause any person into believing that they were practice units registered under the PAO.

The Competition Commission is of the view that the Bill does not raise any competition concerns, and believes that the reasonable restriction imposed by the Bill is justified by the need to protect the public from being misled about the qualifications of companies providing accounting services.

b) The suggestion by the Association of Chartered Certified Accountants on restricting the use of the description “registered auditors” instead of the additional descriptions proposed in the Bill

Reports from the media have revealed that financial intermediaries have used in their business names descriptions such as “會計事務所” to attract members of the public to use their services for preparing financial reports in order to enable borrowing money from money lenders.

The Consumer Council in 2016 reported on a case where the victim of a financial intermediary stated that she had trusted a firm simply because the firm had the description “accounting” (會計) in its business name and believed they were credible.

The sole addition of the description “registered auditors” would not be adequate to help the public differentiate between members and non-members of the Institute who are providing non-audit services.

c) Exemption for members of any institute of accountants outside Hong Kong

Under the existing section 42(2) of the PAO, any member of any body or institute of accountants outside Hong Kong, not being a certified public accountant, is exempted from the provisions of section 42(1) in relation to the use of descriptions or initials. Such member is allowed to use any description or initials which he/she is entitled to use under the constitution of that body or institute if by such use he/she does not represent that he/she is a certified public accountant or is entitled to practise as a certified public accountant (practising) pursuant to the PAO..

The rights given to overseas accountants under section 42(2) will not change under the amendments made by the Bill to section 42(1).

d) Views on whether the problem involving the collusion between bogus CPA firms and unscrupulous CPAs signing “substandard” financial reports without performing due diligence could be resolved with the HKICPA’s tighter monitoring and more stringent disciplinary actions against its members who were found guilty of professional misconduct, without resorting to the legislative amendments proposed in the Bill

The Bill would make it more difficult for bogus CPA firms to operate by stopping them from using the descriptions under the Bill which could mislead members of the public into believing they are qualified to provide such services.

2) Response to the deputations’ written submissions

Deputation	Views expressed in the written submission	Response
Association of Chartered Certified	Support in principle, the proposed amendments.	Thank you for the support.

Accountants	<p>Recommend that description such as 'registered auditors' (as legislated in the UK) could be considered as a more sensible option.</p>	<p>Reports have shown members of the public have been misled by names as simple as '會計事務所'.</p> <p>Additional descriptions are necessary to differentiate between those practice units and firms regulated under the PAO and those companies or firms that are not when the public would like to make use of firms to provide non-auditing services.</p>
	<p>The proposed amendments would create an unfair treatment to those registered with professional bodies accredited by the IFAC but not registered under the Professional Accountants Ordinance.</p>	<p>Under the existing section 42(2) of the PAO, any member of any body or institute of accountants outside Hong Kong, not being a certified public accountant, is exempted from the provisions of section 42(1) in relation to the use of descriptions or initials. Such member is allowed to use any description or initials which he/she is entitled to use under the constitution of that body or institute if by such use he/she does not represent that he/she is a certified public accountant or is entitled to practise as a certified public accountant (practising).</p> <p>The rights given to overseas accountants under section 42(2) will not change under the amendments made by the Bill to section 42(1).</p>

	Those persons should be allowed to use descriptions of 'professional accountants' or 'qualified accountants' or '專業會計師' or '會計師'	It has been an offence for non-members of the HKICPA to use the descriptions of 'professional accountant' '專業會計師' or '會計師' since the enactment of the PAO in 1973.
Hong Kong Institute of Chartered Secretaries	Supports the passage of the bill	Thank you for the support.
The Society of Chinese Accountants & Auditors	Welcome all the proposed changes in the Bill except for the amount of fine.	Thank you for the support.
Hong Kong Accounting Professionals Association	Concerned that upon passage of the Bill, overseas qualified accountants who are not members of the Institute would inadvertently contravene section 42(1) of the PAO	<p>Under the existing section 42(2) of the PAO, any member of any body or institute of accountants outside Hong Kong, not being a certified public accountant, is exempted from the provisions of section 42(1) in relation to the use of descriptions or initials. Such member is allowed to use any description or initials which he/she is entitled to use under the constitution of that body or institute if by such use he/she does not represent that he/she is a certified public accountant or is entitled to practise as a certified public accountant (practising).</p> <p>The rights given to overseas accountants under section 42(2) will not change under the</p>

		amendments made by the Bill to section 42(1).
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