



18 February 2019

By email

Our Ref.: C/CLP(18), M120093
Your Ref.: CB1/BC/4/18

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

Dear Mr. Lam,

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

Thank you for your letter dated 24 January 2019. In respect of the actions to be followed up by the Hong Kong Institute of Certified Public Accountants ("the Institute"/"HKICPA"), we reply as follows:

(b) Response to the deputations' written submissions received and views expressed at the meeting

Submission from ACCA dated 9 January 2019

ACCA has recommended that in order to enable the general public to identify easily whether a person or a company is a practice unit qualified to provide auditing services, descriptions such as "registered auditor" should be considered. Those persons who are members of any full member body of the International Federation of Accountants ("IFAC") but not registered under the Professional Accountants Ordinance ("PAO") should be allowed to use descriptions of "professional accountant", "qualified accountant", "專業會計師" or "會計師".

Please note that since the enactment of the PAO in 1973 which established the Institute, HKICPA members were registered as professional accountants/ 專業會計師 under the PAO, and it has been an offence for non-members of the Institute to use the description "professional accountant", "專業會計師" or "會計師". To align with international practices, the PAO was amended in 2004 such that HKICPA members are registered as certified public accountants/ 會計師 and entitled to use the initials "CPA". The legacy descriptions of HKICPA members as "professional accountant" and "專業會計師" remain in the PAO.



If the use of the descriptions "professional accountant", "專業會計師" or "會計師" is relaxed to allow members of IFAC bodies to use the same, various parts of the PAO, including the title of the ordinance, will have to be amended. This goes far beyond the scope of the Professional Accountants (Amendment) Bill 2018 ("the Bill") which seeks to amend section 42 of the PAO to tighten up restrictions on the use of misleading descriptions by individuals, firms and companies that are not certified public accountants or practice units.

Submission from Hong Kong Accounting Professionals Association ("HKAPA") dated 10 January 2019

HKAPA is concerned that upon passage of the Bill, overseas qualified accountants who are not certified public accountants (i.e. HKICPA members) would fall foul of the law if they use the descriptions prohibited by the Bill in connection with their business.

We would like to point out that under section 42(2) of the existing PAO, the prohibition does not apply to the use by a member of any body or institute of accountants outside Hong Kong, not being a certified public accountant, of any description or initials which he is entitled to use under the constitution of that body or institute if by such use he does not represent that he is a certified public accountant or is entitled to practise as a certified public accountant (practising).

Accordingly, the amendments made by the Bill to section 42(1) will not change or override the protection given to overseas accountants under section 42(2).

Submission from The Society of Chinese Accountants & Auditors ("SCAA") dated 9 January 2019

SCAA has suggested HKICPA to add a webpage in its website similar to the "Scam Alert" webpage of The Law Society of Hong Kong as a channel to report suspected cases and to search the names and details of the offenders.

Please note that a similar suggestion was considered by the Institute before the enactment of the 2013 PAO amendment bill which was aimed at tackling the problem of bogus CPA firms. The Institute was of the view that posting a list of the bogus CPA firms on its website would have the negative effect of promoting the names of these entities, and instead decided to enhance the Hong Kong CPA Practice Directory in the HKICPA website which contains a full list of CPA firms and corporate practices duly registered with the Institute.

(c) Information on the penalties for offences relating to the use of designated or misleading descriptions by individuals, firms and companies which are not professional accountants/ CPAs or practice units in overseas jurisdictions

The maximum penalties for the relevant offences stipulated in the laws of some of the Canadian provinces and U.S. states are appended below for reference only:

	Maximum fine	Maximum term of imprisonment
<u>Canada</u>		
Alberta	1 st offence: C\$2,000 (HK\$12,000) 2 nd offence: C\$4,000 (HK\$24,000) 3 rd offence: C\$6,000 (HK\$36,000)	- - -
Ontario	1 st offence: C\$10,000 (HK\$60,000) 2 nd offence: C\$25,000 (HK\$150,000)	- -
Saskatchewan	1 st offence: C\$5,000 (HK\$30,000) 2 nd offence: C\$10,000 (HK\$60,000) 3 rd offence: C\$20,000 (HK\$120,000)	- - 6 months
<u>The United States</u>		
California	US\$1,000 (HK\$7,850)	6 months
Connecticut	US\$1,000 (HK\$7,850)	1 year
Hawaii	US\$5,000 (HK\$39,250)	-
Louisiana	US\$500 (HK\$3,925)	1 year
Mississippi	US\$5,000 (HK\$39,250)	6 months
New York	US\$1,000 (HK\$7,850) or twice the amount of gain from the crime	1 year
Washington	US\$30,000 (HK\$235,500)	6 months

(e) Details of court cases whereby the defendants concerned were convicted or acquitted of the offences under section 42 of the PAO relating to misleading representation, and the relevant penalties imposed

We recall that at the Bills Committee meeting held on 18 January 2019, the Institute was only requested to provide information on cases involving the use of the misleading descriptions proposed in the Bill which could not be prosecuted under the existing PAO.

In 2016, the Institute came across an entity which was not a practice unit registered with the Institute and was carrying on business under the name of "XX 註冊會計". The characters "註冊會計", which means 'registered accounting', might mislead the public into believing that the entity was a practice unit and subject to regulation by HKICPA. Under the current PAO, the entity has not committed an offence because "註冊會計" is not a specified description prohibited for use by persons who are not certified public accountants or practice units. The case was therefore not referred to the police.

The Institute sought to request the relevant authorities to direct the entity to change its name, but to no avail. While the Companies Registrar has the power under the Companies Ordinance to direct a company to change its name if the name is likely to cause harm to the public or otherwise contrary to the public interest, "XX 註冊會計" was only a business name and not a company registered with the Companies Registry. The Institute then explored the possibility of requesting the Commissioner of Inland Revenue not to allow the registration of the business name in question, but noted that this was not feasible under the Business Registration Ordinance. Therefore, no action could be taken against the entity.



(f) Views on whether the problem involving the collusion between bogus CPA firms and unscrupulous CPAs signing "substandard" financial reports could be resolved with the HKICPA's tighter monitoring and more stringent disciplinary actions against its members, without resorting to the legislative amendments proposed in the Bill

The Institute takes the regulation of auditors very seriously. All practising members and practice units are subject to the Institute's Practice Review Programme which monitors their compliance with the Institute's quality control requirements, auditing and other relevant standards. Any complaints of substandard audits are also investigated by the Institute's Compliance Department. Use of subcontractors by the member/ practice unit to carry out the audit work without proper quality control system and procedures to address compliance with the required standards is taken very seriously by the Institute. The Institute has no hesitation in taking disciplinary actions against such members with audit deficiencies identified during the practice review or arising from complaints, resulting in cancellation of their practising certificate (the licence to perform audits) in some cases.

At the same time, to the extent that the Bill would make it more difficult for bogus CPA firms to operate, it would alleviate the problem set out in the question above.

Yours sincerely,

A handwritten signature in blue ink that reads "Tracy Wong". The signature is written in a cursive, flowing style.

Tracy W.T. Wong
Director, Admission

TW/vs