

香港特別行政區政府
財經事務及庫務局
財經事務科
香港金鐘道六十六號
金鐘道政府合署十五樓



FINANCIAL SERVICES BRANCH
FINANCIAL SERVICES AND
THE TREASURY BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

15TH FLOOR
QUEENSWAY GOVERNMENT OFFICES
66 QUEENSWAY
HONG KONG

電話 TEL.: 2528 9016
圖文傳真 FAX.: 2869 4195
本函檔號 OUR REF.: ACCT/2/4C (2018)
來函檔號 YOUR REF.: CB1/BC/4/18

By fax and email

18 February 2019

Clerk to Bills Committee
(Attn.: Mr Desmond LAM)
Legislative Council Secretariat
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. The Administration's responses are set out in **Annex** for your follow-up action.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Billy AU', written over a grid pattern.

(Billy AU)

for Secretary for Financial Services and the Treasury

Bills Committee on Professional Accountants (Amendment) Bill 2018

Responses to Matters Raised at the Meeting on 18 January 2019

We have sought the advice of the Department of Justice (“DoJ”) on the relevant issues addressed to the Administration on the list of follow-up actions. Our responses are set out below.

Essential factors for determining “intention” and threshold in establishing “may reasonably cause” (Item (d) of the list of follow-up actions)

2. It will depend on the actual facts of a case as to what would constitute an intention of causing a person to believe that an individual, a body corporate or a firm is a certified public accountant (“CPA”) or a practice unit registered under the Professional Accountants Ordinance (cap. 50) (“PAO”) and what are the essential factors for determining whether there is such an intention in the case.

3. From the prosecution’s perspective, if the suspect makes voluntary admissions to the effect that he / his body corporate / his firm has used the specified descriptions intending to cause any person to believe that he / his body corporate / his firm is a CPA or a practice unit, then it is a strong admissible evidence of the suspect having such an intent. Where however there is no direct admission, the requisite intent has to be inferred from the relevant circumstances of the case. A foresight of the consequence, e.g. the use of such specified descriptions may cause a person to believe that the user is a CPA or a practice unit, is an evidence of the existence of the intent. Nevertheless, such an evidence must be considered and weighted, together with all other evidence in the case. The probability of the consequence is an important matter to consider and can be critical in determining whether the consequence is intended.

4. With regard to the threshold in establishing that the specified descriptions may reasonably cause a person to believe that the user is a CPA or a practice unit, the prosecution must establish beyond reasonable doubt that the use of the specified descriptions may reasonably cause a person to believe that the individual, the body corporate or the firm concerned is a CPA or a practice unit. The wording “may reasonably cause” means that the prosecution has to prove beyond reasonable doubt that objectively, the use of such specified descriptions may reasonably cause a person to have the stated belief.

Records on the relevant court cases (Item (e) of the list of follow-up actions)

5. Please be informed that the DoJ does not maintain any records on the number of

court cases instituted pursuant to section 42 of the PAO.

The powers of the Hong Kong Institute of Certified Public Accountants (“HKICPA”) in respect of “collusion” (Item (f) of the list of follow-up actions)

6. Various provisions in section 34 of the PAO are relevant to the acts of collusion between bogus CPAs and qualified CPAs or practice units. If a Disciplinary Committee of the HKICPA is satisfied that a complaint referred to it under section 34 of the PAO is proved, it may, at its discretion, make any one or more of the disciplinary orders set out in section 35 of the PAO on the CPA or the practice unit.

Financial Services and the Treasury Bureau

18 February 2019