

# 立法會 *Legislative Council*

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## **Report of the Bills Committee on Professional Accountants (Amendment) Bill 2018**

### **Purpose**

This paper reports on the deliberations of the Bills Committee on Professional Accountants (Amendment) Bill 2018 ("the Bills Committee").

### **Background**

2. Currently, under section 42(1) of the Professional Accountants Ordinance (Cap. 50) ("PAO"), any person, who is: (a) not a certified public accountant; or (b) a body corporate not being a corporate practice or a firm not being a practice unit registered under PAO, is prohibited to use in connection with its business, trade, calling or profession or in its name certain specified descriptions. These specified descriptions include "professional accountant", "certified public accountant", "certified accountant", the initials "CPA", the characters "專業會計師", "註冊會計師", "會計師" and 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 the person using such descriptions is a certified public accountant or practice unit registered under PAO.

3. Except for the offence under section 42(1)(l),<sup>1</sup> contravention of section 42(1) of PAO is an offence and liable on conviction to a fine at level 4 (HK\$25,000) and to imprisonment for 12 months in the case of an individual, and to a fine at level 4 in the case of a firm of certified public accountants (practising) or a body corporate.

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<sup>1</sup> The offence under section 42(1)(l)(failure to notify a change of registered office) is punishable by a fine at level 2 (HK\$5,000).

4. As explained in the Legislative Council ("LegCo") Brief on the Professional Accountants (Amendment) Bill 2018 ("the Bill") provided by Mr Kenneth LEUNG, it is observed that some companies, which are not practice units registered under PAO, have been using in their names certain descriptions such as "professional accounting", "registered accounting", or the characters "專業會計" or "註冊會計", causing confusion and leading the public to believe that such companies are practice units qualified to provide professional auditing service under PAO. There have also been concerns about crimes involving intermediaries operating under the name of, among others, an "accounting firm". It is therefore important to enable the general public to identify easily whether a person or a company is a practice unit qualified to provide professional auditing service under PAO. It is also important to prohibit unqualified companies and individuals from providing professional auditing service, as it may damage the reputation and integrity of the accountancy profession in Hong Kong.

### **Professional Accountants (Amendment) Bill 2018**

5. The Bill is a Member's bill introduced by Mr Kenneth LEUNG with the written consent of the Chief Executive.<sup>2</sup> Approval from the Hong Kong Institute of Certified Public Accountants ("HKICPA") to introduce the Bill into LegCo was obtained at its annual general meeting on 14 December 2017. The Panel on Financial Affairs was consulted on the Bill at the meeting on 5 January 2018. The Bill was published in the Gazette on 2 November 2018 and received its First Reading at the Council meeting of 14 November 2018.

6. The object of the Bill is to amend section 42(1) of 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 registered under PAO. The major provisions of the Bill include:

- (a) prohibiting a person who is not a certified public accountant from using *nine* additional specified descriptions which are similar in meaning to "professional accountant" or "certified public accountant" in connection with his/her business, trade, calling or profession (Clause 3(1) to (4) of the Bill);

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<sup>2</sup> Mr Kenneth LEUNG, Member in charge of the Bill, received the written consent of the Chief Executive on 8 October 2018 for the Bill to be introduced into the Legislative Council in accordance with Article 74 of the Basic Law and Rule 51(4) of the Rules of Procedure.

- (b) prohibiting a body corporate, not being a corporate practice registered under PAO, from using in its name *13* additional specified descriptions which are similar in meaning to "professional accountant" or "certified public accountant" (Clause 3(5) to (10) of the Bill);
- (c) prohibiting a firm which is not a practice unit registered under section 28A of PAO, other than a sole proprietorship of a certified public accountant, from using in its name *16* specified descriptions, with the effect that the prohibited descriptions in relation to such a firm would be the same as those in relation to a corporate practice (Clause 3(11) of the Bill); and
- (d) increasing 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) (Clause 3(12) and (14) of the Bill).

7. A table setting out the descriptions currently specified under PAO and the additional descriptions proposed in the Bill is in **Appendix I**.

### **The Bills Committee**

8. At the House Committee meeting on 16 November 2018, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix II**. Under the chairmanship of Mr Charles Peter MOK, the Bills Committee has held four meetings to discuss the Bill with Mr Kenneth LEUNG, Member in charge of the Bill, HKICPA and the Administration, including one meeting to receive oral representations from deputations/individual. A list of the deputations/individual that have submitted views to the Bills Committee is in **Appendix III**.

### **Deliberations of the Bills Committee**

#### Impact on accounting-related service providers not registered under PAO

9. Some members including Mr James TO and Mr CHAN Chun-ying and some deputations have raised concern about the impact of the Bill on small firms. In particular, these members are concerned that the proposed restrictions on the use of misleading descriptions may be too

stringent that many small firms providing accounting, company secretarial or bookkeeping services will not be able to continue their businesses after the passage of the Bill, as most of such firms are not practice units registered with HKICPA under PAO but have been using the proposed additional specified descriptions such as the characters "專業會計" in their company names. Ms Starry LEE has pointed out that quite a lot of individuals who have different levels of accounting training and qualifications but are not registered with HKICPA are providing accounting-related services in the market. It will be very difficult to classify them as those who are not providing professional services.

10. Mr James TO has reservations about the Bill, and has pointed out that as the list of the proposed additional specified descriptions is so long, the affected parties, which may include experienced accounting-related service providers not registered under PAO, may be deprived of any choice of descriptions at all in naming their companies or introducing themselves to clients. He opines that the restrictions should be on the use of relevant professional titles rather than description of accounting work. He is therefore concerned that the Bill, in essence, will give members of HKICPA exclusive right to use the descriptions "professional accounting", "registered accounting" and "certified accounting". In his view, as these descriptions are related to work but not the professional title of the person performing such work, issues of anti-competition may arise if persons other than certified public accountants (i.e. members of HKICPA) would upon passage of the Bill be prohibited from performing accounting work.

11. Ms Alice MAK concurs that with the passage of the Bill, the general public will, to a certain extent, be able to differentiate genuine and professional accounting firms from the fake ones. Given an increasing number of crimes involving money lending activities by intermediaries operating under the name of, among others, an "accounting firm" or the characters "會計事務所", causing the general public to believe that such intermediaries provide professional accounting services, she is of the view that the Bill will serve to educate the general public not to blindly trust any company hailing themselves as an accounting firm.

12. Some members consider that a balance should be struck between the need to prevent deliberate misleading representation of business nature/professional qualification and the possibility of causing accounting-related service providers who are not registered with HKICPA to contravene PAO inadvertently.

13. Mr Kenneth LEUNG and HKICPA have advised the Bills Committee that the Bill is by all means not intended to prohibit small firms from providing accounting or bookkeeping services. The legislative intent of the Bill, as stressed by Mr LEUNG, is to prohibit the use of descriptions by individuals, firms or companies which may mislead the public into believing that they are certified public accountants or practice units registered under PAO, when in fact they are not. Mr LEUNG has also advised that there is remote possibility that the mere use of the prohibited descriptions in its name by an individual who is not a certified public accountant or by a body corporate or a firm not being a practice unit registered under PAO without the intention to mislead any person to believe that they are certified public accountant or practice unit registered under PAO would constitute an offence.

14. The Administration has advised that the legislative intent of the Bill is consistent with the Administration's policy to prohibit any body corporate or individual from using misleading descriptions with the intention to cause any person to believe that the body corporate or individual is a certified public accountant or a practice unit registered under PAO. The Administration agrees that the Bill will help to further protect the interest of the public by preventing misleading representation and helping the public to identify qualified professional accountants.

15. In respect of the concern on anti-competition practices, the Bills Committee notes that Mr Kenneth LEUNG has sought the Competition Commission's views on the Bill. The Commission is of the view that the Bill does not raise any competition concerns, and the modest restriction on competition imposed by the Bill appears to be outweighed by the need to protect the public from being misled about the qualifications of companies providing accounting services.

16. For the avoidance of doubt, the Bills Committee has sought clarification on whether it is allowable, after the passage of the Bill, for a body corporate, not being a corporate practice registered with HKICPA, to use the description "professional accounting" in its name or refer its clients to a professional accounting or auditing service provider if it has indicated explicitly to its clients its identity as a non-HKICPA member.

17. Mr Kenneth LEUNG and HKICPA have advised that it will be permissible under the provisions of the Bill for a body corporate which is a non-HKICPA corporate practice to provide taxation or bookkeeping services as long as the services are not related to professional auditing service. The Bills Committee also notes that it is unlikely for HKICPA to refer complaints against such body corporates to the Police if they do

not have the intention to mislead any person into believing that they are corporate practice qualified to provide auditing service under PAO.

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

18. The Bills Committee notes a deputation's concern that upon the passage of the Bill, qualified accountants in other jurisdictions, who are not certified public accountants (i.e. members of HKICPA), may fall foul of the law if they use the prohibited descriptions proposed in the Bill in carrying out business in Hong Kong.

19. Mr Kenneth LEUNG and HKICPA have advised that under section 42(2) of 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). As pointed out by Mr LEUNG and HKICPA, the proposed amendments to section 42(1) of PAO will not change or override the rights given to overseas accountants under section 42(2) of PAO.

Factors for determining "intention" and threshold in establishing "may reasonably cause"

20. During the course of scrutiny of the Bill, the Bills Committee sees the importance of ascertaining whether the Bill provides the necessary safeguards for accounting-related service providers, such as bookkeeping, taxation and company secretarial services, from inadvertently contravening PAO upon the passage of the Bill. In this regard, the Administration has been requested to advise the Bills Committee on what would constitute an intention of causing a person to believe that a body corporate or a firm was a practice unit registered under PAO, and the essential factors for determining whether a prohibited act under PAO is committed with the relevant intention.

21. The Administration has advised that 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 or a practice unit registered under PAO, and what would be the essential factors for determining whether there is such an intention in the case.

22. The Administration has also advised that from the prosecution's perspective, if the suspect makes voluntary admissions to the effect that he or his body corporate or his firm has used the specified descriptions intending to cause any person to believe that he or his body corporate or his firm is a certified public accountant 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, for example, the use of such specified descriptions may cause a person to believe that the user is a certified public accountant or a practice unit, is evidence of the existence of the intent. That said, such evidence must be considered and weighted, together with all other evidence in the case. The probability of the consequence is also an important matter to consider and can be critical in determining whether the consequence is intended.

23. As regards the threshold in establishing that the specified descriptions may reasonably cause a person to believe that the user is a certified public accountant or a practice unit, the Administration has advised that 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 certified public accountant 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.

The proposed prohibition of the use of the description "professional accounting" and the characters "專業會計"

24. Some members including Mr James TO share a deputation's concern that the prohibited use of the description "professional accounting" or the characters "專業會計" as proposed in Clause 3 of the Bill may cause serious and widespread repercussion on the survival of small and medium-sized accounting firms and other practitioners providing legitimate accounting-related services.

25. HKICPA has advised the Bills Committee that as a normal practice, HKICPA will act on complaints about malpractices in the profession. While registered members of HKICPA will be disciplined if found guilty of professional misconduct, HKICPA will refer criminal offences involving non-HKICPA members to the Police for investigation. Both Mr Kenneth LEUNG and HKICPA have assured the Bills Committee that after the passage of the Bill, it is still unlikely for

HKICPA to refer to the Police a complaint against a company using the description "professional accounting" or the characters "專業會計" in its name if the subject company does not have the intention to mislead or it may not reasonably cause any person to believe that the subject company is a practice unit registered under PAO.

26. Some members including Mr James TO have requested Mr Kenneth LEUNG to consider proposing amendments to Clause 3 of the Bill to the effect that the description "professional accounting" and the characters "專業會計" be deleted from the prohibited descriptions as proposed in the Bill. Mr Kenneth LEUNG has advised that the prohibition of the use of "professional accounting" and "專業會計" is necessary and should not be deleted from the additional specified descriptions as proposed in the Bill. Currently, PAO prohibits, among others, the use of the descriptions "professional accountant" and "certified public accountant" or the characters "專業會計師" and "會計師". PAO, however, does not prohibit the use of the description "accountant", which is generic and does not have a corresponding Chinese translation under Hong Kong law. As a general usage, the description "accountant" can be translated as "會計" or "會計師". Likewise, the prohibited characters "會計師" does not have a corresponding English translation under Hong Kong law.

27. In Mr Kenneth LEUNG's view, when a person describes himself as "專業會計" in Chinese, the public may infer that the person is a "professional accountant" in English, the use of which is restricted under PAO. Similarly, when a person describes himself as an "accountant" in English, the public may infer that the person is "會計師", the use of which is restricted under PAO. When "專業會計" or "professional accounting" is used as part of a phrase, it describes a service. Mr LEUNG has further advised that a layman, especially those foreign investors who come to Hong Kong and want to secure the services of professional accountants, may not be able to discern the difference between the trade descriptions of "a firm of professional accountants providing accounting service" and "a firm of accountants providing professional accounting service". The former description is restricted but the latter is not under PAO. It is thus necessary and reasonable to extend the restricted usage.

28. Mr Kenneth LEUNG also opines that the prohibited description "professional accounting" and the characters "專業會計" as proposed in Clause 3 of the Bill will not cause serious repercussion on the survival of small firms providing accounting-related services as there are many other



descriptions these firms may use to refer to their services such as "professional bookkeeping", "professional taxation", "professional company secretary" and "professional consultancy", or the characters such as "專業簿記", "專業稅務", "專業公司秘書" and "專業顧問", all of which are not prohibited to use under PAO. Mr LEUNG has also advised that there is no plan or intention to expand the prohibited descriptions other than those proposed in the Bill.

29. Mr James TO does not agree with the explanation provided by Mr Kenneth LEUNG, and opines that it is unfair to restrict the use of the characters "專業會計" to members of HKICPA only, given the characters "專業會計" could have multiple meanings in both Chinese and English. It is beyond reason to assume that ordinary people will regard "professional accountant" as the English translation of the characters "專業會計". Mr TO considers that if the use of the characters "專業會計" with the intention to mislead has been so rampant that those who are 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 does 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.

30. The Bills Committee notes that HKICPA is unable to refer cases to the Police involving the use of the misleading descriptions "professional accounting" and the characters "專業會計" which are currently not prohibited for use by non-HKICPA members or non-practice units in their names under PAO. Mr James TO, however, opines 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 have been used by individuals or body corporates in their names. In the event that the Department of Justice ("DoJ") does not agree that the persons concerned could be prosecuted, it will then be the decision of DoJ to provide reasons. Similarly, in the event that the persons concerned are prosecuted but the court has ruled that a conviction could not be made, the court will provide reasons for its ruling. In both scenarios, light will be shed on whether loopholes actually exist in the current PAO and appropriate legislative amendments should be made.

31. In connection with the above, Mr James TO has indicated that he will consider proposing amendments to Clause 3 of 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. Mr CHAN Chun-ying has also suggested that for the avoidance of doubt, an amendment may be proposed to the Bill to the effect that it will not constitute an offence under PAO if individuals or body corporates only use 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 are certified public accountants or practice units registered under PAO.

#### Other issues

32. In the course of scrutiny of the Bill, the Bills Committee has taken the opportunity to consider the following issues.

#### *Suggestion of requiring members of HKICPA to display practising certificates and show registration numbers*

33. Some members including Ms Starry LEE, Mr CHAN Chun-ying and Ms Alice MAK have suggested that members of HKICPA should be required to have their registration numbers with HKICPA printed on their business cards and/or to display their practising certificates at a prominent position of their offices. They are of the view that the suggested arrangement may help the general public to easily identify "certified" accountants from "non-certified" ones and companies which are practice units qualified to provide professional auditing service under PAO.

34. HKICPA has advised that the existing PAO does not mandate HKICPA-registered members or practice units to display their registration numbers or practising certificates. Whether or not an individual or a company is a HKICPA-registered member or practice unit can be ascertained from the membership list and the Hong Kong CPA Practice Directory, all of which are available on the HKICPA website. HKICPA has further advised that the Registration and Practising Committee ("RPC") of HKICPA has discussed a similar suggestion made by Mr Kenneth LEUNG three years ago. RPC was then of the view that the requirement would not help the public identify whether the entity was a practice unit registered with HKICPA. That said, RPC will discuss afresh in the first half of 2019 the suggestion of requiring its practice units to display their registration numbers together with their names at all times, and will revert to LegCo (i.e. the relevant Panel) on the outcome of the discussion.

*The acts of collusion between bogus certified public accountants and unscrupulous certified public accountants*

35. The Bills Committee has considered a deputation's view that it shall be the responsibility of HKICPA to deal with the problem of the acts of collusion between bogus certified public accountants and unscrupulous certified public accountants signing "substandard" financial reports, through tighter monitoring and more stringent disciplinary actions against its members who are found guilty of professional misconduct, without resorting to the legislative amendments proposed in the Bill.

36. HKICPA has advised that it takes the regulation of auditors very seriously. All practising members and practice units are subject to HKICPA's Practice Review Programme which monitors their compliance with HKICPA's quality control requirements, auditing and other relevant standards. Complaints of substandard audits are investigated by the Compliance Department of HKICPA. In addition, 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 HKICPA. HKICPA has assured the Bills Committee that it 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.

37. The Bills Committee further notes that various provisions in section 34 of PAO are relevant to the acts of collusion between bogus certified public accountants and qualified certified public accountants or practice units. If a Disciplinary Committee of HKICPA is satisfied that a complaint referred to it under section 34 of PAO is proved, it may, at its discretion, make any one or more of the disciplinary orders set out in section 35 of PAO on the certified public accountant or the practice unit.

**Proposed amendments to the Bill**

38. The Legal Adviser to the Bills Committee has pointed out that the proposed amendments in Clause 3(12) and (14) of the Bill to increase the level of fine payable for certain offences under section 42(1) of PAO cover several offences which are not related to the prohibited use of misleading descriptions. In this regard, Mr Kenneth LEUNG has advised that he will 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 are related to the use of misleading descriptions. He will also propose a technical amendment to the long title to reflect that the Bill also includes an amendment for other related purpose (i.e. the proposed amendment to section 42(1)(ii) of PAO).

39. Mr Kenneth LEUNG has also advised 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 will propose an amendment to Clause 1 of the Bill to add a provision specifying 1 January 2020 as the commencement date of the Bill.

40. Both HKICPA and the Administration have no comment on Mr LEUNG's amendments. The Bills Committee raises no objection to Mr LEUNG's proposed amendments, and will not propose amendments to the Bill.

41. The Bills Committee notes that Mr James TO has indicated that he will consider proposing amendments to Clause 3 of the Bill (details are in paragraphs 24 to 31).

### **Resumption of Second Reading debate**

42. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 3 April 2019.

### **Consultation with the House Committee**

43. The Bills Committee reported its deliberations to the House Committee on 22 March 2019.

**List of descriptions currently specified under PAO and  
the additional descriptions proposed in the Bill**

	<b>Specified descriptions under section 42(1) of PAO</b>	<b>Additional specified descriptions proposed in the Bill</b>
<b>Individual</b>	As provided in section 42(1)(h)(i) and (ii): 1. professional accountant 2. certified public accountant 3. certified accountant 4. 專業會計師 5. 會計師 6. 註冊會計師 7. CPA	As added by Clause 3(1) to (4): 1. registered accountant 2. professional accounting 3. registered accounting 4. certified public accounting 5. certified accounting 6. 專業會計 7. 註冊會計 8. 認可會計 9. 執業會計
<b>Body corporate</b>	As provided in section 42(1)(ha)(iv): 1. certified public accountant 2. CPA 3. 會計師	As added by Clause 3(5) to (10): 1. professional accountant 2. certified accountant 3. registered accountant 4. professional accounting 5. registered accounting 6. certified public accounting 7. certified accounting 8. 專業會計師 9. 註冊會計師 10. 專業會計 11. 註冊會計 12. 認可會計 13. 執業會計
<b>Firm (except sole proprietorship of a certified public accountant)</b>	Not provided	As added by Clause 3(11): 1. professional accountant 2. certified public accountant 3. certified accountant 4. registered accountant 5. professional accounting 6. registered accounting 7. certified public accounting 8. certified accounting 9. CPA 10. 專業會計師 11. 會計師 12. 註冊會計師 13. 專業會計 14. 註冊會計 15. 認可會計 16. 執業會計

**Bills Committee on Professional Accountants (Amendment) Bill 2018**

**Membership List**

<b>Chairman</b>	Hon Charles Peter MOK, JP
<b>Members</b>	Hon James TO Kun-sun
	Hon Starry LEE Wai-king, SBS, JP
	Hon Kenneth LEUNG
	Hon Alice MAK Mei-kuen, BBS, JP
	Hon CHAN Chun-ying, JP

(Total : 6 members)

<b>Clerk</b>	Mr Desmond LAM
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<b>Legal Adviser</b>	Ms Clara TAM
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**Bills Committee on Professional Accountants (Amendment) Bill 2018**

**List of organizations/individuals that  
have submitted views to the Bills Committee**

1. The Association of Chartered Certified Accountants
2. Hong Kong Accounting Professionals Association
3. Mr Tony WONG Kim-tin
4. Mid-Tier Firm Alliance
- \* 5. The Hong Kong Institute of Chartered Secretaries
- \* 6. The Society of Chinese Accountants and Auditors

\* written views only