

## LEGISLATIVE COUNCIL BRIEF

### PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 2018

#### Introduction

1. The Hon Kenneth Leung has introduced Professional Accountants (Amendment) Bill 2018 (the “**Bill**”) under Article 74 of the Basic Law. The Panel on Financial Affairs (the “**FA Panel**”) of the Legislative Council was consulted regarding the Bill on 5 January 2018. Members of the FA Panel had no objection to the introduction of the Bill into the Legislative Council. The Chief Executive granted her consent for the Bill to be introduced before the Legislative Council on 8 August 2018.

#### Background and purpose

2. In 2013, the Hon Kenneth Leung introduced the Professional Accountants (Amendment) Bill 2013 to prohibit any company which is not a corporate practice from using the terms “certified public accountant”, “CPA” or “會計師” in its name if the intention is to cause, or which may reasonably cause any person to believe that it is a practice unit under the Professional Accountants Ordinance (the “**PAO**”). The Bill passed on 30 October 2013 and came into force on 14 January 2014.
3. The amendments proposed under this Bill add to the relevant subsections of section 42(1) of the PAO additional descriptions such as “professional accounting”, “registered accounting”, “certified accounting”, “專業會計” and “註冊會計” etc., which may similarly mislead the public into believing that the service providers are, or are related to, certified public accountants or practice units registered with and subject to supervision by the Hong Kong Institute of Certified Public Accountants (the “**Institute**”).
4. Company Registry’s records have revealed that there are companies registered with the Companies Registry which are currently using terms such as “Professional Accounting”, “Registered Accounting”, “專業會計” or “註冊會計” in their names, which may cause confusion and lead the public to believe that such companies are

practice unit qualified to provide professional auditing service under the PAO.

5. In a reply to a written question raised by the Hon Kenneth Leung on 16 December 2015, the Secretary for Financial Services and the Treasury stated the Police were concerned about crimes arising from money lending activities, in particular, those with the involvement of financial intermediaries. Between August to October 2015, the Police received 235 reported case from the public concerning alleged illegal activities by financial intermediaries. Out of these cases, 61 cases had classified as criminal cases.
6. The Secretary for Financial Services and the Treasury also observed that there were cases under which financial intermediaries operating under the name of an “accounting firm”, a “law firm” or a “consultancy firm” claimed to be able to provide professional services including debt restructuring, stress test analyses, accounting advice, improvement in credit records for individuals.
7. It is in the public interest to enable the general public to identify easily whether a person or a company is a practice unit which is qualified to provide professional auditing service under the PAO. It is also important to prohibit unqualified company and individual from providing professional auditing services, as this practice may damage the reputation and integrity of the accountancy profession in Hong Kong.
8. According to information provided by the Institute, between 2013 and 2018, the police successfully prosecuted 11 cases of unlicensed practices, all of which involved an unlicensed practice holding itself out as a professional accountant to provide audit services in its website or other promotional materials, with the penalty ranging from \$2,500 to \$20,000.
9. The current pecuniary penalty provided in the PAO for the offences under Section 42(1) is a fine at level 4 (\$25,000) and up to 12 months of imprisonment for individuals, and a fine at level 4 (\$25,000) for firms. The current level of penalty has not been a successful deterrent to put offenders in check.

10. A version of the Bill (named Professional Accountants (Amendment) Bill 2016) was presented to the FA Panel to brief members on 15 November 2016. The draft bill was further enhanced after input from the Institute. The Financial Services and Treasury Bureau proceeded to request that the updated Bill be brought to the Panel on Financial Affairs once again to explain the enhancements.
11. Though it is not a mandatory requirement under the PAO, Institute members' approval to support the proposed bill was sought and received at the Institute's annual general meeting on 14 December 2017.
12. The Hon Kenneth Leung consulted the Competition Commission about the Bill. In a letter dated 28 August 2017, the Competition Commission noted that it does not consider the Bill to have raised any competition concerns, and was of the view that the modest restriction on competition imposed by the Bill appeared to be outweighed by the need to protect persons from being misled about the qualifications of companies providing accounting services.

### **The Bill**

13. The Bill seeks 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 with the Hong Kong Institute of Certified Public Accountants, when in fact they are not. It seeks to amend section 42 of the PAO to prohibit —
  - (i) to prohibit a person who is not a certified public accountant from using additional specified descriptions which are similar in meaning to "professional accountant" or "certified public accountant" in his business, trade, calling or profession;
  - (ii) to prohibit a body corporate or a firm, not being a practice unit registered under the PAO, from using in their names additional specified descriptions which are similar in meaning to "professional accountant" or "certified public accountant", or any written words, initials, or abbreviations of words, if they intend to cause or may reasonably cause any person to believe

that the body corporate or the firm is a practice unit; and

- (iii) to increase the penalty level of offence to reinforce the deterrent effect against related offences under Section 42(1) of the PAO.
- 14.** Clause 3(1) to (4) of the Bill amends section 42(1)(h)(i) of the PAO to prohibit a person who is not a certified public accountant from using 9 additional specified descriptions, namely “registered accountant”, “professional accounting”, “registered accounting”, “certified public accounting”, “certified accounting”, “專業會計”, “註冊會計”, “認可會計” and “執業會計” .
- 15.** Clause 3(5) to (10) of the Bill amends section 42(1)(ha)(iv) of the PAO to prohibit a body corporate which is not a corporate practice registered under the PAO from using in its name 13 additional specified descriptions, namely “professional accountant”, “certified accountant”, “registered accountant”, “professional accounting”, “registered accounting”, “certified public accounting”, “certified accounting”, “專業會計師”, “註冊會計師”, “專業會計”, “註冊會計”, “認可會計” and “執業會計”, or any written words, initials or abbreviations of words, if the body corporate intends to cause or may reasonably cause any person to believe that it is a practice unit. The 13 specified descriptions include the 9 new specified descriptions introduced into section 42(1)(h)(i) of the PAO under clause 3(2) and (4) of the Bill, and the descriptions “professional accountant”, “certified accountant”, “專業會計師” and “註冊會計師” which currently appear in section 42(1)(h)(i) of the PAO.
- 16.** Clause 3(11) of the Bill adds a new paragraph (iaa) to section 42(1) of the PAO to prohibit a firm, which is not a practice unit registered under section 28A of the PAO, other than a sole proprietorship of a certified public accountant, from using in its name 16 specified descriptions, namely “professional accountant”, “certified public accountant”, “certified accountant”, “registered accountant”, “professional accounting”, “registered accounting”, “certified public accounting”, “certified accounting”, “CPA”, “專業會計師”, “會計師”, “註冊會計師”, “專業會計”, “註冊會計”, “認可會計” and “執

業會計”, or any written words, initials or abbreviations of words, if the firm intends to cause or may reasonably cause any person to believe that it is a practice unit. The 16 specified descriptions are identical to the ones provided for a body corporate under section 42(1)(ha)(iv) of the PAO as amended by clause 3(5) to (10) of the Bill (i.e. “certified public accountant”, “CPA” and “會計師” currently appearing in section 42(1)(ha)(iv) of the PAO plus the 13 specified descriptions in paragraph 15).

17. Clause 3(12) and (14) of the Bill increases the level of fine payable for breaches of section 42(1) of the PAO, except for breaches of section 42(1)(l) of the PAO, from level 4 to level 5.
18. Clause 3(13) of the Bill amends section 42(1)(ii) of the PAO to rectify an existing lacuna that the subsection only refers to a firm of certified public accountants (practising) but not a firm which is not a firm of certified public accountants (practising).

### **Legislative Timetable**

19. The legislative timetable is as follows:

Panel on Financial Affairs	5 January 2018
Publication in the Gazette	2 November 2018
First Reading and commencement of Second Reading Debate	15 November 2018

### **Further Amendments**

20. On 9 November 2018, the Legal Service Division of the Legislative Council Secretariat gave the observation that clauses 3(12) and 3(14) of the Bill, as presently drafted, will also raise the penalty level for offences under section 42(1) of the PAO not related to the use of misleading descriptions by individuals, firms and companies that are not certified public accountants or practice units. As this is not consistent with the long title of the Bill, the Hon Kenneth Leung was asked to clarify the legislative intent of the Bill.

21. In a reply dated 12 November, the Hon Kenneth Leung stated he agreed with the observations and will draft the appropriate amendments to the Bill to address the anomaly.

### **Consultation**

22. The Administration, including the relevant government bureaux and departments, together with relevant statutory authorities, has no objection to the introduction of the Bill.

### **Publicity**

23. The Bill was published in the Gazette on 2 November 2018 and further publicized through the column “Professionals Guild” in Hong Kong Economic Journal on 14 November 2018 and two media features in Apple Daily and Oriental Daily in November 2018. A public consultation on the Bill was hosted on the Hon Kenneth Leung’s official website and promoted through social media from 18 October 2018 to 21 November 2018. The web page continues to be hosted on the website and includes an introduction of the Bill stating its background and its impact on the public.

### **Enquiries**

24. Any enquiries about this brief can be directed to Mr. Michael Wong, research officer of the Office of the Hon Kenneth Leung (telephone number: 3758 2603; email address: [michael@kennethleung.hk](mailto:michael@kennethleung.hk)).

**Office of the Hon Kenneth Leung**  
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