



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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By Email (billyau@fstb.gov.hk)

11 August 2021

Mr Billy AU  
Prin AS for Financial Services & the Treasury  
(Financial Services) 4  
Financial Services and the Treasury Bureau  
24/F, Central Government Offices  
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Mr AU,

**Financial Reporting Council (Amendment) Bill 2021**

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, we should be grateful if you could clarify the issues set out at **Annex**.

We would appreciate it if you would let us have the Administration's response in bilingual form as soon as practicable. Meanwhile, as our scrutiny of the Bill continues, our further enquiries may follow in due course.

Yours sincerely,

(Evelyn LEE)  
Assistant Legal Adviser

c.c. Department of Justice  
(Attn: Ms. Wendy HO, SGC(Atg) (Email:wendyho@doj.gov.hk))  
LA  
SALA3  
Clerk to the Bills Committee

Regulatory reform for the accounting profession

1. It is noted that the Bill proposes to, among others, transfer certain major regulatory powers in respect of certified public accountants ("CPAs") under the Professional Accountants Ordinance (Cap. 50) and the Professional Accountants By-laws (Cap. 50A) from the Council of the Hong Kong Institute of Certified Public Accountants ("HKICPA") or other relevant committees and/or panels ("C&Ps") to the Financial Reporting Council (proposed to be renamed as the Accounting and Financial Reporting Council) ("AFRC"). In this regard, please provide the following information:

- (a) According to paragraph 7 of the Legislative Council ("LegCo") Brief, the reform proposed by the Bill would make the existing regulatory regime for accounting professionals more in line with the international standard and practice. Please provide example(s) of such standard and practice in relevant overseas jurisdictions.
- (b) It is noted that the HKICPA Council still retains some of its functions under the proposed reform (such as its approval of a person's application to be registered as a CPA under section 26 of Cap. 50). Further, the Bill seeks to provide for a Student Disciplinary Panel to be established by the HKICPA Council pursuant to the proposed new by-law 33A of Cap. 50A. In the light of the above, please elaborate on the powers and functions under Cap. 50 and Cap 50A that are proposed to be:
  - (i) transferred from the HKICPA Council and/or C&Ps to AFRC; and
  - (ii) retained or performed by the HKICPA Council and/or the C&Ps.

Conformity with Article 142 of the Basic Law

2. Article 142(3) of the Basic Law ("BL") provides, among others, that the HKSAR Government shall continue to recognize the professional organizations recognized prior to the establishment of the Region, and these organizations may, on their own, assess and confer professional qualifications. The ordinary dictionary meaning of "recognize" is "acknowledge the existence, validity or legality of, especially by formal approval or sanction; accord notice or attention to; treat as worthy of consideration or show appreciation of [something or someone]".<sup>1</sup>

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<sup>1</sup> *Shorter Oxford English Dictionary* (6<sup>th</sup> Edition), Volume 2 at page 2489.

3. The Bill seeks to, among others, provide for:
- (a) the transfer to AFRC from the HKICPA Council of its functions in respect of issuing practising certificate and regulating the accounting profession through inspection, investigation, taking disciplinary actions and imposing sanctions under Cap. 50 and Cap. 50A;
  - (b) AFRC's power to dispense with the HKICPA Council's requirement for a person to sit the examinations set by the HKICPA Council to ascertain whether the person has the requisite experience and knowledge that the HKICPA Council considers necessary for the person to be a CPA (practising) in Hong Kong (see paragraph 6 below for details);
  - (c) the removal from HKICPA of its power to make by-laws for regulating the practice of accountancy by professional accountants in Hong Kong by proposing to repeal section 8(1)(a) of Cap. 50 (see clause 110 of the Bill); and
  - (d) the removal from HKICPA of its object in respect of discouraging dishonourable conduct and practices by CPAs as a whole by proposing to repeal section 7(h) of Cap. 50 (see paragraph 14 below for details).
4. Please explain, in the light of the arrangements mentioned in paragraphs 1 and 3 above, whether and how the *reform proposed under the Bill as a whole* is in conformity with BL 142(3).
5. The Bill proposes to, among others, establish an Advisory Committee under the Financial Reporting Council Ordinance (Cap. 588) ("Advisory Committee") to advise AFRC on matters of policy regarding any of its regulatory objectives and functions by adding a new section 10A to Cap. 588 and a new Part 4A to Schedule 2 to Cap. 588 (see clauses 14 and 100(26) of the Bill). The proposed composition of the Advisory Committee consisting of "practitioners, service users, and other stakeholders of the accounting profession" as referred to in paragraph 21 of the LegCo Brief is not reflected under the Bill. In the light of the above, please:
- (a) confirm that the above composition would be adopted when constituting the Advisory Committee, i.e. its members would be "practitioners, service users, or other stakeholders of the accounting profession";
  - (b) provide in the Bill for the matters which AFRC would consider when consulted by the Financial Secretary on the appointment of the Advisory Committee members under paragraph 13A(1)(d) of the above-said new Part 4A; and
  - (c) explain the reason for not reflecting the above composition in the legislation.

Issue and renewal of practising certificate

6. Under the proposed new section 20AAB(2) of Cap. 588, AFRC must not grant a practising certificate application unless the requirements under the proposed new section 20AAL are met ("Requirements"). According to the proposed new section 20AAL(1)(b) and (3), the HKICPA Council may, among others, require the relevant applicant to sit the examinations set by the HKICPA Council for ascertaining whether the applicant possesses the local experience and knowledge that the HKICPA Council considers necessary. However, AFRC may, under the proposed new section 20AAL(4) of Cap. 588, dispense with the above requirement if AFRC considers that the applicant has acquired substantial experience in accountancy over a period of time which the AFRC considers to be sufficient. In this regard, please provide the following information:

- (a) whether AFRC would consult the HKICPA Council before deciding to dispense with any of the requirements specified in the proposed new section 20AAL(3); and
- (b) whether, and if so how, the power conferred on AFRC by the proposed new section 20AAL(4) is in conformity with BL 142(3), which provides, among others, that professional organizations may, on their own, assess and confer professional qualifications.

7. It is noted that the Requirements also include that the applicant concerned intends to practise as a CPA (practising) (see the proposed new section 20AAL(1)(g)). According to the proposed new section 20AAO(1)(a), AFRC may cancel the practising certificate held by a CPA if the CPA fails to commence practice within 6 months after the date of issue of the practising certificate. Please explain what the applicant must do (such as making a declaration to the effect or providing the address of the registered office in which the CPA proposes to practise) in order to satisfy the proposed new section 20AAL(1)(g) of Cap. 588.

8. According to the proposed new section 20AAF(2) of Cap. 588, if a CPA (practising) would like to apply for the renewal of the CPA's practising certificate, the application must be made no later than 15 December of the year in which his current practising certificate expires ("Deadline"). However, unlike section 28(2)(a) or 30(3) of Cap. 50 pursuant to which the HKICPA Council may permit an application for registration renewal as a CPA to be made on such later day as the Council may approve (or may permit an application for a practising certificate to be made at any time), the Bill does not seek to confer on AFRC the discretion to allow an application for the renewal of a practising certificate to be made after the Deadline, even if the situation so warrants. Please explain the aforesaid arrangement under the Bill, and, in particular, the reason for not conferring on AFRC a discretion similar to that conferred on the HKICPA Council under section 28(2)(a) or 30(3) of Cap. 50.

### Cancellation or suspension of practising certificate on non-disciplinary grounds

9. While the proposed new section 20AAO provides for the conditions that AFRC may cancel or suspend a practising certificate on non-disciplinary grounds, the Bill does not expressly provide for the situation where a CPA (practising) has become mentally incapacitated and unable to be or continue being a CPA (practising). However, section 37F of Cap. 588 as proposed to be amended by clause 65 of the Bill provides, among others, that AFRC may, among others, revoke or suspend the registration of a registered PIE-auditor who has been found by a court to be mentally incapacitated (see section 37F(1)(a)(iv) of Cap. 588). In the light of the aforesaid, please clarify how a CPA (practising) who has become mentally incapacitated would be dealt with under Cap. 50 or Cap. 588 if the Bill is passed.

### Matters which may be considered as professional misconduct

10. Clause 60 of the Bill seeks to add a new section 37AA to Cap. 588 to provide, among others, for the CPA misconducts which are punishable by AFRC under the proposed new section 37CA of Cap. 588 (such as imposing on the person concerned a penalty of not exceeding \$500,000). While CPA misconduct includes any act of a professional person which amounts to a professional irregularity as defined in the proposed new section 3B of Cap. 588 (see the proposed new section 37AA(1)(a) of Cap. 588) and professional irregularity includes a professional misconduct (see the proposed new section 3B(1)(h) of Cap. 588), the term "professional misconduct" is not defined under Cap. 588 or in the Bill. Please explain the meaning of the term "professional misconduct" and consider whether it is necessary for the term to be defined under the Bill.

### Guidelines to be issued by AFRC

11. Clause 67 of the Bill proposes to amend section 37H of Cap. 588 by providing, among others, that AFRC must not impose a pecuniary penalty (up to \$500,000) under the proposed section 37CA(2)(b) for any CPA misconduct unless AFRC has had regard to the guideline(s) published in the Gazette (which would not be subsidiary legislation) indicating the way in which AFRC exercises its power to impose the penalty. In the light of the above, please provide the following information:

- (a) whether AFRC would consult the Advisory Committee, any professional body, organization or stakeholders, etc. in formulating such guideline(s) or before publishing them in the Gazette;
- (b) the matters that may be included in the guideline(s);
- (c) if the answers to (a) is in the affirmative, the reasons for not providing for the consultation in the Bill (see, for example, section 83(3) of the Insurance Ordinance (Cap. 41));

- (d) if the answer to (a) is in the negative, the reason(s) for not doing the consultation; and
- (e) the reason for not specifying the matters referred to in (b) in the Bill (see, for example, section 199(2) of the Securities and Futures Ordinance (Cap. 571)).

#### Avoidance of conflict of interests

12. Section 53 of Cap. 588 mainly provides for the avoidance of conflict of interests and disclosure requirements applicable to, among others, an FRC member or any person who performs a function under the Ordinance. Clause 88 mainly seeks to amend the section by (i) renaming FRC as AFRC; (ii) repealing the provisions in respect of the matters which are required to be disclosed; (iii) removing the penalty to be imposed on a person who has contravened the disclosure requirement; and (iv) empowering AFRC to determine, among others, the interest(s) and the details of the interest(s) which are required to be disclosed. In the light of the above, please provide the following information :

- (a) how the proposed new arrangement can provide or continue to provide an effective mechanism for the avoidance of conflict of interests;
- (b) the matters AFRC would take into consideration in determining whether an interest is required to be disclosed under the proposed new section 53(3) of Cap. 588; and
- (c) the legal consequences of someone failing to make the requisite disclosure in lieu of a penalty provision, i.e. the repealed section 53(8) of Cap. 588.

#### Power to make regulations

13. Please explain why the Bill does not seek to specifically provide for the power of AFRC or the Secretary for Financial Services and the Treasury to make regulation in respect of the regulation of accounting professionals other than PIE-auditors save for the purposes of transitional arrangements and saving provisions (see clause 98 of the Bill).

#### Consequential and related amendments

14. Under the Bill, the function of holding inquiries into dishonourable conduct and practices is proposed to be transferred from HKICPA Council (or the relevant C&Ps) to AFRC (or the Accounting and Financial Reporting Review Tribunal). Please explain why it would no longer be HKICPA's object to "discourage dishonourable conduct" (see section 7(h) of Cap. 50 proposed to be repealed by clause 108(2) of the Bill) under the proposed regulatory reform.

15. It is noted that clause 134 of the Bill seeks to, among others, repeal by-laws 28 and 29 of Cap. 50A which provide, among others, for HKICPA Council's approval or permission in certain circumstances (such as the approval for a CPA (practising)'s name to be made use of in connexion with the practice of public accountancy by a person who is not a CPA (practising), or the permission for a CPA (practising) to continue practising in the name or style in which a deceased CPA (practising) was lawfully practising prior to his death and as an employee of the personal representative of the deceased CPA (practising)). Further, the Bill does not seek to make express or specific provisions for AFRC's approval or permission in respect of the aforesaid arrangements. As such, it appears that a CPA (practising) who is affected by the relevant circumstances may be unable to seek permission or approval from the HKICPA Council or AFRC under the proposed new arrangement. In the light of the above, please provide the following information:

- (a) the reason for seeking to provide for the new arrangement;
- (b) what AFRC or an affected person, if any, may or should do under the proposed new arrangement if the person finds it necessary to seek permission or approval for the arrangement mentioned in by-law 28 or 29A;
- (c) whether the Administration would consider providing in the Bill for AFRC's powers similar to those which are provided under the said by-laws in Cap. 588 so that AFRC may consider whether to permit or approve the above arrangement(s); and
- (d) if the answer to (c) is in the negative, the reasons for not making such provision.