

Bills Committee on Financial Reporting Council (Amendment) Bill 2021 (“the Bill”)

Summary of views of Submissions and the Administration’s response

Item	Summary of views of submissions	Administration’s responses
(A) Overview		
1.	<p>Support or agree with the reform proposal.</p> <p><i>[The Society of Chinese Accountants and Auditors (“SCAA”), Accounting Development Foundation (“ADF”), Hong Kong Association of Registered Public Interest Entity Auditors (“PIEAA”), CPA Australia, The Taxation Institute of Hong Kong (“TIHK”), Hong Kong Investment Funds Association (“HKIFA”), Hong Kong Chartered Governance Institute (“HKCGI”), CFA Society Hong Kong (“CFA Society”), Hong Kong Institute of Directors (“HKIoD”), Hong Kong Securities Association (“HKSA”), Accountancy Caring Alliance (“ACA”), Association of Women Accountants (Hong Kong) (“AWAHK”) and an institute requesting not to disclose its submission]</i></p>	<p>We are pleased to note the views in the submissions.</p>
2.	<p>The reform proposal will develop the Financial Reporting Council (“FRC”) into a full-fledged independent regulator to enhance the independence of the regulatory regime of the accounting profession/ ensure impartiality.</p> <p><i>[PIEAA, HKIoD, HKCGI, TIHK, SCAA, HKIFA, CFA Society, ACA,</i></p>	

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	<i>HKSA, CPA Australia and AWAHK]</i>	
3.	<p>The reform proposal will render the regulatory regime of the accounting profession in line with the international trends/ developments/ standard and practice and more comparable to other major jurisdictions.</p> <p><i>[TIHK, SCAA, AWAHK, ACA, AFD, HKIFA, HKIoD, PIEAA and HKSA]</i></p>	
4.	<p>The reform proposal will help bolster investor protection.</p> <p><i>[HKIFA]</i></p>	
5.	<p>The reform proposal will serve public interest as accounting and auditing of or relating to non-listed, non-public companies also carry an important public interest.</p> <p><i>[HKIoD]</i></p>	
6.	<p>The Council of the Hong Kong Institute of Certified Public Accountants (“HKICPA”) has expressed concern about the short notice of the intention to reform the regulatory regime, the legislative timetable, and the lack of clarity about the transition period and arrangements. A survey of Institute members and registered students showed a majority of respondents did not agree with the manner in which the legislation had been introduced and the reasons</p>	<p>The Government has taken a step-by-step approach in the regulatory reform which started in 2018, when the Financial Reporting Council (Amendment) Bill 2018 was introduced to transfer the powers to regulate auditors of Public Interest Entities (“PIE”) from the HKICPA to the FRC. The current reform exercise is the second step to further enhance the independence of our regulatory regime of the accounting profession in line with international developments.</p>

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	<p>given for the need for change for the key proposals in the Bill. <i>[HKICPA]</i></p> <p>There is insufficient time and information for discussion of the reform proposal. <i>[Several members of HKICPA]</i></p> <p>Students are also affected by the transfer and the Student Unions should be separately consulted. <i>[Several members of HKICPA]</i></p>	<p>In the current reform exercise, we have adopted a phased approach. In the first phase (i.e. from June to July 2021), while preparing the draft Bill on the reform, we conducted intensive and extensive consultations among major stakeholders (including the HKICPA and other accounting associations, accounting professional bodies, industry representatives and accounting service users). Stakeholders are generally supportive of the direction of the reform. In particular, they consider that the reform will enhance the independence of regulation and the protection of the interests of users of professional accounting services. We then introduced the Bill in late July 2021 into the Legislative Council ("LegCo") for scrutiny, during which we continue to engage stakeholders which have specific views on the Bill. The Bill aims at providing the key legal framework for the reform. Subject to its passage in LegCo, we will formulate transitional arrangements for the transfer of powers, and introduce the details by way of subsidiary legislation. Meanwhile, the FRC will engage the profession and various stakeholders for drawing up policies and codes of practice on the implementation of the expanded functions. The Government will then commence the new regulatory regime when all such preparatory work is satisfactorily done. The process is long and multi-phased, and contains many opportunities for the Government and the FRC to consult stakeholders along the way.</p>
(B) Transitional arrangements, transitional period and implementation details		
7.	The Government/ the FRC should work with the profession/ the	Upon the passage of the Bill, we will prepare the subsidiary legislation to

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	<p>industry/ stakeholders to iron out the transitional arrangements/ related subsidiary legislation/ the implementation details and to ensure smooth transition/ implementation.</p> <p><i>[TIHK, HKIFA, HKCGI, HKIoD, PIEAA, CPA Australia, AWAHK, ACA]</i></p>	<p>provide for the transitional arrangements (including those regarding the handling of ongoing cases) and other technical details of the new regime. Meanwhile, the FRC will develop guidelines and other administrative documents in relation to its expanded powers over practice units and certified public accountants ("CPA"). In particular, the FRC will be required to publish guidelines on pecuniary sanctions under disciplinary proceedings in the Gazette</p>
8.	<p>There should be a clear mechanism on the transfer of the live cases from HKICPA to FRC. Otherwise, the transition process may take many years to complete and all relevant parties will suffer.</p> <p><i>[CFA Society]</i></p>	<p>before imposing any pecuniary sanctions on practice units and CPAs under the new regime. They will engage the profession and other stakeholders and listen to their views in the process.</p>
9.	<p>An education-oriented approach in respect of disciplinary sanctions should be adopted during the transition period and a punishment-led approach should be avoided.</p> <p><i>[ADF, ACA, AWAHK]</i></p>	
10.	<p>The Bill should include requirements for the FRC to develop and publish policies and guidelines on scope and application of a number of functions and powers of the FRC before the effective date of the new regime.</p> <p><i>[HKICPA]</i></p>	
11.	<p>The existing Professional Accountants Ordinance (Cap. 50) ("PAO") provisions on inspection, investigation and discipline must continue</p>	

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	<p>to operate for not less than one year after 31.12.2021. The subsidiary legislation and the criminal offences covered by it must be released before the enactment of the Bill and the commencement of the registration work of the FRC.</p> <p><i>[Several members of HKICPA]</i></p>	
(C) Funding / financial / fee arrangement of FRC		
12.	<p>The Government should explore the possibility to have a further round of capital injection to the FRC due to its expanded roles.</p> <p><i>[SCAA, HKSA]</i></p>	<p>The Government is actively considering the exemption of the application fees for issue of practising certificates and registration in the first year of the implementation of the reform. For the application fees to be collected thereafter, the Government plans to freeze the fees for the first few years of implementation at a level no higher than that which is currently collected by the HKICPA, so as to assist the accounting profession to adapt to the new regulatory regime. We will review the FRC's assessment of its operational and resources requirements under the new regime, and propose the specific timing for start collecting as well as the level of the relevant application fees by way of subsidiary legislation for the LegCo's scrutiny in the next legislative session.</p> <p>The Government will ensure that the FRC continues to exercise stringent cost control and utilise its resources in an effective manner. Apart from that, the Government will also attend to the financial position of the FRC and consider different measures as and when necessary, including injection of additional funding, to ensure its financial competence for the implementation of its various tasks.</p>
13.	<p>To follow the user pays principle, the Government should consider allowing the FRC to inherit the fee charging scale from the HKICPA initially and revise the fee charging scale upon conclusion of the review on the funding model of the FRC.</p> <p><i>[CFA Society]</i></p>	
14.	<p>When fees are to be charged by the FRC, they should be at a proportionally low level, and it is expected that relevant fee level will be lower than the current ones established by the HKICPA.</p> <p><i>[AWAHK]</i></p>	
15.	<p>The fees to be charged by the FRC should be at the levels comparable</p>	

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	<p>to those currently charged by the HKICPA with a reduction equivalent to the saving in the regulatory cost achieved by the reform.</p> <p><i>[ACA]</i></p>	
16.	<p>It is important that the FRC presents its financial budgets for the next few years from 2022 for all to see if its staff costs would be sufficiently financed by levies and registration fees. The last thing the accounting practitioners would like to see is increase in annual registration fees to finance the future deficit of FRC.</p> <p><i>[Hong Kong Professionals and Senior Executives Association ("HKPSEA")]</i></p>	<p>The FRC will submit its annual budgets to the Financial Secretary for approval in accordance with the Financial Reporting Council Ordinance (Cap. 588) ("FRCO"). We will also brief the LegCo Panel on Financial Affairs on the key points of the budgets in order to monitor the financial arrangements of the FRC.</p>
17.	<p>As the functions of the FRC will be expanded to regulate practice units and CPAs who do not engage PIE engagements, it is questionable whether the existing method to fund the FRC by levies from PIEs and securities transactions is fair and reasonable.</p> <p><i>[HKSA]</i></p>	<p>The income and expenditure for the FRC's regulation of PIE auditors and other practice units and CPAs will be planned on the "user-pay" principle to avoid unreasonable cross-subsidisation. The Government will also ensure that the FRC continues to exercise stringent cost control and utilise its resources in an effective manner.</p>
18.	<p>The Government should ensure that the FRC exercise stringent cost control and utilize its resources effectively so as to avoid unnecessary expansion of its establishment.</p> <p><i>[HKSA]</i></p>	

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(D) Statutory Advisory Committee		
19.	<p>Recommend that the advisory committee should represent a diversified user group of accounting and auditing services, as well as professional bodies which are independent and representative of the voices of interested parties.</p> <p><i>[AWAHK]</i></p>	<p>In order to facilitate the FRC's regulatory work under the reformed new regime in relation to a variety of areas in accounting, audit and assurance and with reference to the arrangements for other financial regulators, the Advisory Committee will consist of practitioners, service users and other stakeholders of the accounting profession. Factors including but not limited to the background and experience of members will be taken into account in the appointments to ensure diversity of expertise of the Advisory Committee relevant to the prevailing regulatory work focus of the FRC.</p>
20.	<p>The advisory committee should have representatives from the director community which represent an important user group of accounting and auditing services.</p> <p><i>[HKIoD]</i></p>	
(E) Issue of practising certificates and registration of firms and corporate practices		
21.	<p>Suggest amending the provisions in the Bill for the FRC to set additional continuing professional development ("CPD") requirement as conditions on granting or renewal of practising certificates.</p> <p><i>[HKICPA]</i></p>	<p>We consider it reasonable for the FRC, as the ultimate authority for issue or renewal of practising certificates, to set the additional CPD requirement. We will introduce a Committee Stage Amendment ("CSA") in this regard.</p>
22.	<p>Suggest including an express requirement in the PAO for CPAs to continue to meet the fit and proper requirement on renewal.</p> <p><i>[HKICPA]</i></p>	<p>We consider it a reasonable suggestion in line with the policy objective of this reform exercise to achieve an enhanced regulatory regime for the accounting profession. In addition, express provisions for continuing fulfilment of the "fit</p>

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		and proper” requirement of a CPA at the time of first registration and subsequent renewals will also be conducive to the effective regulation of the accounting profession by the FRC. A CSA will be introduced.
23.	<p>Need clarification on whether accountants in other jurisdictions and non-HKICPA members may also be granted practising certificates by the FRC in the future.</p> <p><i>[ADF, ACA]</i></p>	<p>Pursuant to the proposed new section 20AA of the FRCO, only a CPA (who has been registered by the HKICPA under the PAO as stipulated in section 2(1) of the FRCO) may apply for issue of a practising certificate. For an accountant in another jurisdiction who is a member of a specified accountancy body, if there has been in force an agreement of mutual or reciprocal recognition between the HKICPA and that accountancy body, he/she may apply to the HKICPA to be registered as a CPA under the relevant agreement and, subject to the registration as a CPA and the fulfilment of relevant qualification requirements (e.g. accounting experience), apply to the FRC for a practising certificate.</p>
24.	<p>Some provisions in the Bill on requirements for issue or renewal of practising certificates and registration which provide for some roles of the HKICPA in the process may defeat the purpose of “reducing compliance burden and enhancing efficiency in regulation”.</p> <p><i>[AWAHK]</i></p> <p>As the FRC will be taking over all registration matters for the practice units, it could be more efficient to have clean out transfer of all registration matters in relation to the practice units to the FRC</p>	<p>In the transfer of power for registration of practice units from the HKICPA to the FRC, while the FRC, as an independent regulator, will be vested with the power to make decisions on applications, the HKICPA, as a professional accounting body and the authority of CPA registration, will be in a suitable position to provide professional and expertise assistance/inputs in the process. This is consistent with the broad principle of this reform which is to differentiate between regulatory and professional functions and assign them to the FRC and the HKICPA respectively.</p>

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	<p>from the HKICPA. <i>[CFA Society]</i></p>	
25.	<p>The relevant provision in the Bill requires practising certificate holder to be ordinary resident in Hong Kong. The HKICPA actually provides other avenues to the applicants to fulfill the ordinary resident requirement. <i>[CFA Society]</i></p>	<p>The proposed new section 20AAL(4) of the FRCO provides for the FRC's discretionary power to dispense with certain requirements for issue of practising certificates, including the requirement that an applicant must be ordinarily resident.</p> <p>The FRC will formulate guidelines on the exercise of its power to issue practising certificates, including its discretionary power, to ensure transparency.</p>
26.	<p>There is a concern on the FRC's future exercise of the discretionary powers on dispensing with the certain requirements for the issue of practising certificate. The exercise of the discretionary powers should be strictly examined, transparent and subject to oversight such that they will be used in very exceptional cases. <i>[HKPSEA]</i></p>	<p>The preparation of the guidelines will make reference to the relevant practices of the HKICPA and views/suggestions of stakeholders.</p>
27.	<p>The PAO sets out the appeal mechanism for the unsuccessful applicants for practising certificates. However, the appeal mechanism does not appear to exist in the Bill. <i>[CFA Society]</i></p>	<p>The FRC's decision on application for issue of practising certificate has been included in the amended definition of "specified decision" under Clause 5 (13) of the Bill and therefore it will be put under the purview of review by the Accounting and Financial Reporting Review Tribunal. If a party to a review is dissatisfied with a determination of the review made by the Tribunal, he/she may appeal to the Court.</p>
28.	<p>The provisions on registration of corporate practice should be</p>	<p>This reform exercise aims to transfer relevant regulatory functions under the</p>

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	<p>repealed and replaced by Limited Liability Partnership model. <i>[Several members of HKICPA]</i></p>	<p>PAO to the FRCO and the suggestion is beyond the scope of the exercise and should be deliberated separately.</p>
(F) Inspection, investigation and disciplinary powers		
29.	<p>The FRC should make reference to the composition of the HKICPA disciplinary committee mechanism and establish a similar mechanism so as to create independence and hence providing confidence to the profession. <i>[SCAA]</i></p>	<p>The procedures established under the FRCO, which are carried out by the FRC executive team under the supervision of the FRC Board comprising all non-practitioners, will be adopted for exercising the new powers to ensure impartiality and independence from the profession. Such arrangements aim to achieve greater independence than the current disciplinary committee mechanism under the PAO.</p>
30.	<p>Seek a guarantee that the maximum penalty imposed for misconduct for non-PIE engagement which is capped at HK\$500,000 should not be changed for a definite period of time, say 5-10 years. <i>[SCAA]</i></p>	<p>We currently do not have plan to revise the maximum level of pecuniary penalty. If needs arise for review of the level in future, the profession and relevant stakeholders will be consulted for initiating an appropriate legislative exercise.</p>
31.	<p>A provision in the new section 3B (professional irregularities) of the FRCO proposed by the Bill may unreasonably restrict the freedom of choice of occupation and business name of a CPA. A CPA should not be forbidden to carry on any service in a trade name of his own choice other than the one registered in the CPA or AFRC register. <i>[HKPSEA]</i></p>	<p>It is not our policy intent to hinder a CPA's engagement in businesses other than accounting using a name other than a registered name. We will introduce a CSA to clarify this.</p>

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32.	<p>Suggest replacing the relevant provisions in the Bill on Student Disciplinary Committee (proposed amendments to the Professional Accountants By-law) with alternative provisions to enable the HKICPA to investigate and discipline registered students in a proportionate and efficient manner.</p> <p><i>[HKICPA]</i></p>	<p>Currently, the PAO provides for the mechanism of disciplinary panel/committee to handle disciplinary matters of CPAs and practice units. Under the relevant by-law, the same mechanism is used for disciplinary matters of registered students. Since the Bill proposes repealing the provisions of the aforementioned disciplinary mechanism as the relevant powers will be transferred to the FRC, it also proposes provision in the relevant by-law some general powers modelled on the existing mechanism for handling disciplinary matters of registered students without specification on the details such as the composition and procedures of the relevant panel and committee, so as to enable the HKICPA to investigate and discipline registered students in a proportionate and efficient manner as it sees fit. In light of the HKICPA's view, the Government is reviewing if the proposed provision in the by-law can be further simplified to allow the HKICPA greater flexibility.</p>
33.	<p>Certain inspection provisions in the Bill should be replaced by/ strictly follow the existing provisions in the PAO or practices of the HKICPA.</p> <p><i>[Several members of HKICPA]</i></p>	<p>In the transfer of inspection powers from the HKICPA to the FRC, the scope of powers (including powers of inspectors) as well as types of follow-up actions the FRC may take will follow those currently provided in the PAO with which the profession is familiar. Meanwhile, the procedures established under the FRCO, which are carried out by the FRC executive team under the supervision of the FRC Board comprising all non-practitioners, will be adopted for exercising the new inspection power to ensure impartiality and independence from the profession.</p>
(G) Prohibitions and offences		

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34.	The FRC should take up the responsibility to assist the profession to combat the situation of bogus accountants. <i>[SCAA]</i>	We acknowledge the profession's concern over the use of certain descriptions which may mislead the public into believing that an individual or a company is a registered CPA or a practice unit as well as the practice of bogus accountants.
35.	Suggest expanding the restricted descriptions on CPA and practice unit to avoid the public being misled. Also suggest raising the relevant fine/ taking other measures to enhance deterrent effect for those using the restricted descriptions unlawfully. <i>[SCAA, ADF, ACA]</i>	The Government will explore ways to improve the situation with various stakeholders such as the accounting profession, relevant service providers and service users.
36.	The exemption provision for prohibition on advertising, etc. as CPA(P) or CPA firm or holding out as corporate practice or taking certain descriptions is applicable to a person using a description or initials that the person is entitled to use under the constitution of a non-Hong Kong accountancy body of which the person is a member. However, it does not take into consideration of legislation of overseas jurisdictions which allows the use of some such descriptions by certain qualified persons. The exemption should be granted if the law of another jurisdiction allows the use of such descriptions. <i>[HKPSEA]</i>	The exemption clause is modelled on section 42 of the PAO. We will discuss this new suggestion with relevant stakeholders when reviewing the existing policy and legislations regarding prohibition of the use of descriptions which may mislead the public into believing that an individual or a company is a registered CPA or a practice unit.
37.	It is provided that the provisions on prohibitions and related offences do not, inter alia, prevent a member of a club, institution or association that is not carried on with a view to profit from acting as an auditor of the club, institution or association. This exclusion	The exemption is modelled on section 29(3)(b) of the PAO. We will discuss this new suggestion with relevant stakeholders in further reviewing the regulatory regime in due course.

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	<p>clause should be reviewed given the growing scale and impact on public interests of the relevant organisations nowadays and many of them have to some degree receive income or donations from the public or Government departments.</p> <p><i>[AWAHK]</i></p>	
38.	<p>The provisions on prohibition on advertising, etc. should be repealed as they do not exist in the PAO.</p> <p><i>[Several members of HKICPA]</i></p>	<p>The provisions on prohibition on advertising, etc. are modelled on section 42 of the PAO.</p>
(H) Others		
39.	<p>Worthwhile to consider transferring the standard setting functions to the FRC as an integral part of the regulatory reform.</p> <p><i>[CFA Society]</i></p>	<p>One of the aims of the proposed reform is to rationalize the functions and roles of the FRC and the HKICPA. While the FRC will become a full-fledged independent regulator vested with a wide range of regulatory powers over the accounting profession, the HKICPA will continue to play the role of an accountancy body with responsibilities relevant to professional standards and development. With rich experience in and an established mechanism for standards-setting as well as working relationship with international standards-setting bodies, the HKICPA will be in a suitable position to continue to issue and specify professional standards for the accounting profession.</p>
40.	<p>Suggest amending the oversight provisions to provide for a workable approach to the FRC's oversight of the HKICPA's monitoring of compliance with CPD requirement.</p>	<p>The HKICPA plays a key role not only in setting CPD requirements and providing its own training and CPD to CPAs, but also in assessing the relevance and quality of CPD content provided by other institutions through CPD audit</p>

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	<i>[HKICPA]</i>	<p>process, and in recognizing the appropriate hours of CPD undertaken by CPAs. The proposed new oversight power of the FRC over HKICPA on CPD is intended to cover HKICPA's role in these respects, and not to imply that the HKICPA would be required to accredit CPD providers or to take over training and CPD activities from the market. The Bills Committee has raised in multiple occasions that the accounting profession and users would expect greater support from the reformed regulatory regime in CPD, and that the FRC would also be given a role in this respect to support the accounting profession. The proposed oversight provision will facilitate the FRC in working jointly with the HKICPA and relevant stakeholders for quality CPD programmes that reflect the regulatory objectives and the need of the profession.</p>
41.	<p>Suggest including a provision for the FRC to share information with the HKICPA to facilitate the HKICPA's discharge of PAO duties.</p> <p><i>[HKICPA]</i></p>	<p>Our intention is that for a body having the statutory power to request another body to provide information, the provision of information from the latter body should be essential for the former body in making statutory decisions, exercising statutory functions or performing oversight duties over the latter body. It is on this basis that the new section 10(1AA) is proposed in the Bill for the FRC's access to HKICPA's information for exercise of its regulatory powers. We however appreciate that in some cases the FRC's information may be useful for the good functioning of the HKICPA. We encourage the two institutions to enter into appropriate agreements or understandings for such other purposes of information sharing and cooperation.</p>
42.	Suggest removing the relevant provisions for the FRC to inspect the	We will introduce a CSA in this regard.

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	<p>HKICPA's accounts as the FRC will be responsible for collecting the levies from PIE auditors.</p> <p><i>[HKICPA]</i></p>	
43.	<p>Recommend that the FRC should consider requiring Hong Kong listed companies to hire local qualified accountants so as to improve the quality of financial reporting.</p> <p><i>[ADF, ACA]</i></p>	<p>This reform exercise aims to transfer relevant regulatory functions under the PAO to the FRCO and the suggestion is beyond the scope of the exercise and should be deliberated separately.</p>

Financial Services and the Treasury Bureau
13 September 2021