

**Bills Committee of Financial Reporting Council (Amendment) Bill 2021
("the Bill")**

Committee Stage Amendments ("CSAs")

This paper sets out the CSAs proposed by the Administration for the Bill. Members are invited to examine the proposed CSAs at Annex. The reasons for the CSAs are provided in our paper issued on 13 September 2021 (LC Paper No. CB(1)1326/20-21(04)) and are also recapped in the footnotes in Annex for ease of reference. These proposed CSAs are subject to further revisions if necessary.

**Financial Services and the Treasury Bureau
23 September 2021**

Financial Reporting Council (Amendment) Bill 2021

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
7 ⁱ	<p>By deleting the proposed section 3B(2)(a) and (b) and substituting—</p> <p>“(a) while being a certified public accountant (practising), practises accountancy on the person’s own account under a name other than—</p> <p>(i) the person’s own name as registered under section 22(2) of the PA Ordinance at the time the person so practises; or</p> <p>(ii) the person’s firm name as registered in the AFRC register at the time the person so practises;</p> <p>(b) renders any service as, or purporting to be—</p> <p>(i) a partner of a firm of certified public accountants (practising) the name of which does not, at the time of rendering the service, appear in the AFRC register; or</p> <p>(ii) a director of a corporate practice the name of which does not, at the time of rendering the service, appear in the AFRC register;”.</p>
7 ⁱⁱ	<p>In the proposed section 3B(4)(d), by deleting “or”.</p>
7 ⁱⁱ	<p>In the proposed section 3B(4)(e), by deleting “conduct.” and substituting “conduct; or”.</p>
7 ⁱⁱ	<p>In the proposed section 3B(4), by adding—</p>

ⁱ This CSA aims to stipulate clearly that the professional irregularity concerned will only cover a practice unit rendering services in practising accountancy not under a registered name. The relevant professional irregularity will not be applicable to non-practising certified public accountants (“CPAs”).

ⁱⁱ This CSA aims to add a new proposed section 3B(4)(f) for the Financial Reporting Council Ordinance (“FRCO”) to supplement the relevant provisions that besides a CPA, a corporate practice may also be appointed as a director of a corporation which is a Trust or Company Service Provider licensee, and therefore should also be regulated in the same way, and to make related technical amendments to the proposed section 3B(4)(d)&(e) and (5).

- “(f) while being a director of a corporation that is a TCSP licensee—
- (i) causes or allows a breach of an AML/CTF requirement by the corporation; or
 - (ii) fails to take reasonable steps to prevent such a breach.”.

7ⁱⁱ In the proposed section 3B(5), in the definition of *AML/CTF requirement*, in paragraph (b)(ii), by deleting “subsection (2)(e)—under” and substituting “subsections (2)(e) and (4)(f)—under”.

8ⁱⁱⁱ By adding—

“(3A) Section 4(2)(a)(vi), after “Council”—

Add

“, or any direction lawfully given by the AFRC”.”.

8ⁱⁱⁱ By adding—

“(6A) Section 4(3)(b), after “Council”—

Add

“, or any direction lawfully given by the AFRC”.”.

8(7)ⁱⁱⁱ By deleting “and (4)(b)”.

8ⁱⁱⁱ By adding—

“(7A) Section 4(4)(b), after “Council”—

Add

“, or any direction lawfully given by the AFRC”.

(7B) Section 4(4)(b), Chinese text, before “理事會” (wherever appearing)—

Add

“公會”.”.

8ⁱⁱⁱ By adding—

“(8A) Section 4(5)(g), after “Council”—

Add

ⁱⁱⁱ These are related technical amendments for the CSA to add a new proposed section 10AA to the FRCO. Please refer to footnote (v) below.

“, or any direction lawfully given by the AFRC”.”.

12(11)^{iv} In the proposed subparagraph (iv), in the English text, by deleting “and”.

12^{iv} By adding—

“(11A) Section 9(g), Chinese text—

Repeal

“及”.

(11B) After section 9(g)—

Add

“(ga) to take any steps that the AFRC considers appropriate to promote and support the development of the accountancy profession; and”.”.

14^v In the heading, by deleting “**Section 10A**” and substituting “**Sections 10AA and 10A**”.

14^v By adding before the proposed section 10A—

“10AA. AFRC’s powers to give directions

- (1) The AFRC may, in connection with the performance of a function, give directions to professional persons.
- (2) A direction under subsection (1) may require a professional person—
 - (a) if the person is or was a certified public accountant—
 - (i) to produce or provide to the AFRC a document or information in connection with the registration of the person under the PA Ordinance as a certified public accountant; or

^{iv} This CSA aims to add a new provision in section 9 (Functions of Financial Reporting Council (“FRC”)) to reflect that under the new regime, the FRC other than having expanded regulatory functions should also assume an enhanced role in promoting and supporting the development of the accounting profession, and to make related technical amendments in the section.

^v Section 18B of the existing Professional Accountants Ordinance (“PAO”) provides for the power of the Hong Kong Institute of Certified Public Accountants (“HKICPA”) Council to make relevant directions in relation to practising certificates and registration certificates of CPAs, firms and corporate practice. Clause 115 of the Bill has already proposed the amendment to section 18B of the PAO such that the HKICPA Council’s power of making such directions would be confined to the registration certificates of CPAs. Meanwhile, as the FRC will be the new authority to issue practising certificates and register firms and corporate practices, the FRC should be empowered to make the relevant directions. This CSA aims to add a new proposed section 10AA for the FRCO for this purpose.

- (ii) to deliver to the AFRC a certificate in the possession, custody or control of the person if the registration to which the certificate relates has ceased to be valid;
 - (b) if the person is or was a certified public accountant (practising)—
 - (i) to produce or provide to the AFRC a document or information in connection with the issue of a practising certificate to the person; or
 - (ii) to deliver to the AFRC a practising certificate in the possession, custody or control of the person if the practising certificate has ceased to be valid;
 - (c) if the person is or was a CPA firm—
 - (i) to produce or provide to the AFRC a document or information in connection with the registration of the firm name of the CPA firm; or
 - (ii) to deliver to the AFRC a certificate of registration in the possession, custody or control of the person if the certificate to which the registration relates has ceased to be valid; or
 - (d) if the person is or was a corporate practice—
 - (i) to produce or provide to the AFRC a document or information in connection with the registration of the corporate practice; or
 - (ii) to deliver to the AFRC a certificate of registration in the possession, custody or control of the person if the certificate to which the registration relates has ceased to be valid.
- (3) Also, a direction under subsection (1) may require a professional person to give to the AFRC an explanation for an act or omission of the person that appears to the AFRC to be—
- (a) conduct unbecoming of a professional person;
 - (b) conduct that may affect the reputation, integrity and status of the AFRC or of the accountancy profession; or
 - (c) conduct that may fall within section 3B.

- (4) For the purposes of sections 3B(1)(f)(ii) and 4(2)(a)(vi), (3)(b), (4)(b) and (5)(g), a direction given under subsection (1) is a direction lawfully given by the AFRC.
- (5) This section does not limit section 10.”.

- 19^{vi} In the proposed section 20AAB(3), by deleting “HKICPA” (wherever appearing) and substituting “AFRC”.
- 19^{vi} In the proposed section 20AAG(3), by deleting “HKICPA” (wherever appearing) and substituting “AFRC”.
- 19^{vii} In the proposed section 20AAL(1)(f)(ii), by deleting “and”.
- 19^{vii} In the proposed section 20AAL(1)(g), by deleting “(practising).” and substituting “(practising); and”.
- 19^{vii} In the proposed section 20AAL(1), by adding—
“(h) the applicant satisfies the fit and proper requirement to be registered as a certified public accountant under section 24(1)(b) of the PA Ordinance.”.
- 19^{viii} In the proposed section 20AAL(7), in the Chinese text, in the definition of 認可會計經驗, by deleting “公會理事會不時” and substituting “獲公會理事會”.
- 19^{ix} In the proposed section 20AAZZR(3), in the Chinese text, by deleting “是執業會計師、會計師事務所或執業法團，方有權追討其作為執業會計師、會計師事務所” and substituting “是執業會計師或執業法團，方有權追討其作為執業會計師”.

^{vi} These CSAs aim to incorporate the suggestions of Bills Committee Members and some stakeholders that the FRC, being the authority for approving and issuing practising certificates, should be empowered to set and impose conditions on additional continuing professional development requirements, where necessary, for individual fresh applications and renewals.

^{vii} In practice, meeting the “fit and proper” test is a core requirement for CPAs and the requirement must be observed at all times. To address the concerns of Bills Committee Members that the “fit and proper” requirement is not expressly set out in the Bill for the application for issuance and renewal of practising certificates, these CSAs are introduced to expressly provide for the “fit and proper” requirement.

^{viii} This is a technical CSA to align with the English text.

^{ix} This is a technical CSA to align with the English text.

- 42^x In the proposed section 20ZZH(3)(a), by deleting “a PIE auditor or non-PIE auditor;” and substituting “or was a PIE auditor, a non-PIE auditor or a registered responsible person of a registered PIE auditor;”.
- 42^x In the proposed section 20ZZH(3)(b), by deleting “person;” and substituting “auditor;”.
- 60^x In the proposed section 37AA(3)(a), by deleting “auditor;” and substituting “auditor or a registered responsible person of a registered PIE auditor;”.
- 60^x In the proposed section 37AA(3)(c), by deleting “37A.” and substituting “37A or 37B.”.
- 85^{xi} By deleting subclause (2) and substituting—
- “(2) Section 50G(1)—
- Repeal**
- everything after “whether the HKEC” and before “under this Part.”
- Substitute**
- “is complying with or has complied with a provision under this Part, the AFRC may, in writing, authorize a person to, at reasonable times, inspect and make copies of the accounts kept by the HKEC”.”.
- 90(4)^{xii} In the proposed definition of *specified matter*, by deleting paragraph (a)(i) and (ii) and substituting—
- “(i) a practice irregularity within the meaning of section 4 has been committed in relation to a PIE engagement or non-PIE engagement carried out for the entity;
- (ii) there is a relevant non-compliance within the meaning of section 5 in relation to the entity; or

^x These are technical CSAs to rectify omissions.

^{xi} Clause 83 of the Bill has proposed to amend the provisions in section 50C of the FRCO related to collection of levies from registered public interest entities auditors to the effect that, under the new regime, the FRC will collect the said levies direct instead of having the HKICPA as a collecting agent. Consequently, it will no longer be necessary to empower the FRC under section 50G(1) to authorize persons to inspect the accounts kept by the HKICPA for the collection of levies. This CSA is introduced to reflect this.

^{xii} This CSA serves to better clarify the scope of immunity provided for whistleblowers who communicate with the FRC on potential cases of practice irregularity and misconduct.

- (iii) misconduct within the meaning of section 37A or 37B has been committed in relation to a PIE engagement or non-PIE engagement carried out for the entity; or”.

101(4)^{xiii} In the proposed paragraph (ga), by deleting “20ZZA” and substituting “20ZZA(1)(b)”.

101(4)^{xiii} In the proposed paragraph (gb), by deleting “20ZZG” and substituting “20ZZG(1)(b)”.

113^{xiv} By deleting the clause and substituting—

“113. Section 15 amended (vacation of office by Council members)

Section 15(1)(e)—

Repeal

“27(1)(a) or section 35(1)(a);”

Substitute

“27(1)(a), under section 35(1)(a) of the pre-amended Ordinance or under section 37CA(4) of the AFRC Ordinance;”.”.

117^{xiv} By deleting subclause (3) and substituting—

“(3) Section 27(6)—

Repeal

“section or section 35—”

Substitute

“section, under section 35(1)(a) of the pre-amended Ordinance or under section 37CA(4) of the AFRC Ordinance—”.”.

New^{xv} By adding—

^{xiii} These are technical CSAs to rectify the references to section numbers in the relevant provisions.

^{xiv} These are technical CSAs to refine the presentation of references to other sections for better clarity.

^{xv} Further to the CSA as explained in footnote (vii) above, the HKICPA has suggested that similar express provisions on requirement for fulfilling the “fit and proper” test should also be made for renewal of CPA registration in the PAO. It is considered 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 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. This CSA is therefore introduced.

“117A. Section 28 amended (expiry of registration and renewal)

(1) Section 28(2)(b)—

Repeal

“and”.

(2) Section 28(2)(c)—

Repeal

“development.”

Substitute

“development; and”.

(3) After section 28(2)(c)—

Add

“(d) must not be granted unless the Council is satisfied that the applicant is a fit and proper person to be a certified public accountant.”.”.

124^{xvi} By deleting the clause and substituting—

“124. Sections 41A and 41B repealed

Sections 41A and 41B—

Repeal the sections.”.

135(3)^{xvii} In the proposed definition of *Student Disciplinary Committee*, by deleting “33A(3)” and substituting “33A”.

136^{xvii} By deleting the proposed by-law 33A and substituting—

“33A. Student Disciplinary Committee

The Council may from time to time constitute a Student Disciplinary Committee for dealing with a complaint under by-law 34.”.

^{xvi} Since the disciplinary functions of the HKICPA will be transferred to the FRC, there is no need to retain the section which provides for immunity in relation to the disciplinary proceedings of the PAO. This CSA is introduced for this purpose.

^{xvii} These CSAs aim to address the concern of the HKICPA by simplifying the proposed provisions in the Professional Accountants By-law on disciplinary matters of registered students to allow the HKICPA greater flexibility.