

Bills Committee of Financial Reporting Council (Amendment) Bill 2021

Committee Stage Amendments (“CSAs”)

We issued a paper on 23 September 2021 (LC Paper No. CB(1)1364/20-21(01)) on the CSAs proposed by the Administration for the Bill. This paper sets out at **Annex** the technical refinements/ supplements to the proposed CSAs after our subsequent discussions with the Legal Service Division of the Legislative Council and internal review. The refinements/supplements are presented in marked-up format with the reasons stated in footnotes.

Financial Services and the Treasury Bureau

5 October 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	<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> <ul style="list-style-type: none">(i) the person’s own name as registered under section 22(2) of the PA Ordinance at the time the person so practises; or(ii) the person’s firm name as registered in the AFRC register at the time the person so practises; <p>(b) renders any service as, or purporting to be—</p> <ul style="list-style-type: none">(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(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;”.
7	<p>In the proposed section 3B(4)(d), by deleting “or”.</p>
7	<p>In the proposed section 3B(4)(e), by deleting “conduct.” and substituting “conduct; or”.</p>
7	<p>In the proposed section 3B(4), by adding—</p> <p>“(f) while being a director of a corporation that is a TCSP licensee—</p> <ul style="list-style-type: none">(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.”.

- 7 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”.
- 8 By adding—
“(3A) Section 4(2)(a)(vi), after “Council”—
Add
“, or any direction lawfully given by the AFRC”.”.
- 8 By adding—
“(6A) Section 4(3)(b), after “Council”—
Add
“, or any direction lawfully given by the AFRC”.”.
- 8(7) By deleting “and (4)(b)”.
- 8 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”.”.
- 8 By adding—
“(8A) Section 4(5)(g), after “Council”—
Add
“, or any direction lawfully given by the AFRC”.”.
- 12(11) In the proposed subparagraph (iv), in the English text, by deleting “and”.
- 12 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 In the heading, by deleting “**Section 10A**” and substituting “**Sections 10AA and 10A**”.

14 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 **under this Ordinance**ⁱ, 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
 - (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;

ⁱ This refinement aims to provide more clearly that directions to be made under the proposed new section 10AA are in relation to the performance of functions under the Financial Reporting Council Ordinance (“FRCO”).

- (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) Nothing in this section is to be taken to compel the production by a person of a record or document containing privileged communication by or to a legal practitioner in that capacity.ⁱⁱ
- ~~(45)~~ 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.
- ~~(56)~~ This section does not limit section 10.”.

19

In the proposed section 20AAB(3), by deleting “HKICPA” (wherever appearing) and substituting “AFRC”.

ⁱⁱ This supplement aims to expressly provide that the directions to be made under the proposed new section 10AA are subject to legal professional privilege so as to align with the expression in other similar provisions.

- 19 In the proposed section 20AAG(3), by deleting “HKICPA” (wherever appearing) and substituting “AFRC”.
- 19 In the proposed section 20AAL(1)(f)(ii), by deleting “and”.
- 19 In the proposed section 20AAL(1)(g), by deleting “(practising).” and substituting “(practising); and”.
- 19 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.”ⁱⁱⁱ
- 19 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 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”~~ (wherever appearing).^{iv}
- 30^v By deleting the clause and substituting—

“30. Section 20Q amended (determination of fit and proper)

(1) Section 20Q—
Renumber the section as section 20Q(1).

(2) Section 20Q(1)—
Repeal
“HKICPA Council”
Substitute
“AFRC”.

(3) Section 20Q(1)(d)—
Repeal

ⁱⁱⁱ This refinement aims to achieve more succinct presentation of the provision.

^{iv} This refinement aims to achieve more succinct presentation of the provision.

^v This supplement aims to clarify for avoidance of doubt that the existing section 20Q of the FRCO is only applicable to the registration of Public Interest Entities auditors and their responsible persons and to make related technical adjustments.

“Professional Accountants Ordinance (Cap. 50)”

Substitute

“PA Ordinance”.

(4) After section 20Q(1)—

Add

“(2) To avoid doubt, this section only applies for the purposes of sections 20H and 20Y.”.

42 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 In the proposed section 20ZZH(3)(b), by deleting “person;” and substituting “auditor;”.

60 In the proposed section 37AA(3)(a), by deleting “auditor;” and substituting “auditor or a registered responsible person of a registered PIE auditor;”.

60 In the proposed section 37AA(3)(c), by deleting “37A.” and substituting “37A or 37B.”.

85 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) 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
- (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) In the proposed paragraph (ga), by deleting “20ZZA” and substituting “20ZZA(1)(b)”.

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

113 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 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 By adding—

“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 By deleting the clause and substituting—

“124. Sections 41A and 41B repealed

Sections 41A and 41B—

Repeal the sections.”.

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

136 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.”.

New^{vi} By adding—

^{vi} This supplementary provision aims to provide for the privileges and immunities that members of a Student Disciplinary Committee and parties have in the disciplinary proceedings against registered students so as to better align with the relevant provision under the existing disciplinary mechanism.

“142A. By-law 36B added

In Part VIII, after by-law 36A—

Add

“36B. Immunity

- (1) The chairperson or a member of the Student Disciplinary Committee performing any function under this Part has the same privileges and immunities a judge of the Court of First Instance has in relation to civil proceedings in that court.
- (2) At the hearing of a complaint, a registered student or a witness, or any counsel, solicitor or person representing the registered student at the hearing, has the same privileges or immunities that the registered student, witness, or counsel, solicitor or person would have had in relation to civil proceedings in the Court of First Instance.””.