



1 September 2021

By email to: bc_12_20@legco.gov.hk

Clerk to Bills Committee on Financial Reporting Council (Amendment) Bill 2021
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Sir,

Financial Reporting Council (Amendment) Bill 2021 (“Bill”)

The Hong Kong Institute of Certified Public Accountants (the “Institute”) is the statutory body empowered to register, regulate and set standards for professional accountants in Hong Kong. The Government has announced its intention to introduce legislation to transfer responsibility for inspection, investigation, and disciplinary powers covering non-public interest entity auditors (including certified public accountants (practising) and practice units), as well as certified public accountants (“CPA”) and responsibility for issuing practising certificates and registering practice units from the Institute to the Financial Reporting Council (“FRC”). The effect of these proposals will have a significant impact on the role and responsibilities of the Institute and result in major re-organisation with potential operational and financial implications.

The President of the Institute was informed of the Government’s intentions on 8 June 2021, shortly before the announcement was made, before which the Institute was unaware that such changes were to be introduced. The Council of the Institute has expressed its 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.

The President of the Institute sent a letter dated 28 June 2021 to the Chairman of the Panel on Financial Affairs, reiterating the concerns about the lack of consultation with stakeholders for proposed legislation of such significance and explaining the steps the Institute was taking to inform and gather views from its members. 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, the reasons given for the need for change nor the key proposals in the Bill.



Since the Bill was gazetted on 16 July 2021 the Institute has been studying the Bill. This exercise identified a number of matters for clarification by the Government such as the segregation of duties and the allocation of responsibilities between the Institute and the future Accounting and Financial Reporting Council (“AFRC”) in setting the requirements and performing the procedures for registration of corporate practices and issuance of practising certificates. The study also facilitated development of some suggested amendments to the Bill such as simplifying the disciplinary arrangements for registered students rather than replicating the existing general Institute disciplinary processes.

At a forum for Institute members held on 28 June 2021, and in other public communications, the Government pledged that the AFRC will follow the scope of powers as well as the types and levels of penalties currently under the Professional Accountants Ordinance (“PAO”) in its new functions of investigation and inspection of practice units and CPAs. In the second members’ forum held on 6 July 2021 the FRC also pledged to largely follow the Institute requirements and approach in registration of practice units and issuance of practising certificates. These principles were also mentioned in the Bills Committee briefing. An additional objective of our review and analysis of the Bill is to determine whether the legislation will deliver the pledges made by the Government and the FRC.

Based on the results of our analysis of the Bill the Institute approached the Government to seek clarification of the legislative intent and to express concerns on a number of areas. Taking into account the responses received from the Government (Financial Services Branch (“FSB”) of the Financial Services and the Treasury Bureau) to our request for clarification the Institute would like to report the following matters to the Bills Committee to provide a full understanding of the key issues that have been under consideration:

1. The Institute requested and received confirmation that there will be subsidiary legislation to allow the AFRC to take over as the regulatory body for accounting professionals under Cap. 615 Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“AMLO”). Consequently the Institute will expect to see subsidiary legislation developed and consequential amendments passed to enable the AFRC to fully take up its AMLO responsibilities and participate in Hong Kong’s relationship with the Financial Action Task Force and the ongoing self and mutual evaluation processes.



2. In respect of the split of responsibilities between the Institute and the AFRC around the registration requirements of practising certificate and corporate practice, the FSB has explained the principle of this further reform, which is to differentiate between the regulatory and professional functions and assign them to the AFRC and the Institute accordingly. The Institute understands the principle and will continue to accept responsibility for professional functions and setting auxiliary requirements such as memorandum and articles of association and professional indemnity insurance requirements for corporate practices. The Institute will expect to see the Government and the FRC develop and publish guidelines and procedures on practising certificate issuance and practice unit registration and renewal during the transition period to ensure the current practices are adopted. The Institute will contribute its knowledge and experience of functions being transferred so as to facilitate an efficient transition and smooth interface with the annual CPA renewal process.
3. The Institute pointed out that it will be difficult for it to set additional Continuing Professional Development (“CPD”) requirements as a condition under s.20AAB(3) and s.20AAG(3) of the Bill on granting or renewal of a practising certificate. As the AFRC will process the applications based on s.20AAL, if any CPD is to be set as a condition, it will be the assessment of the AFRC and there will be no grounds for the Institute to do so. The Institute foresees operational inefficiency with this arrangement, especially during the tight annual renewal time frame. The proposed provisions are also not consistent with setting conditions for public interest entity (“PIE”) auditors under s.20S of the Bill. The FSB’s response indicates that the FSB is inclined to accept the Institute’s view that the responsibility for setting “additional CPD requirements” as a condition should rest with the AFRC. This position is confirmed in the FSB’s letter to the Bills Committee dated 25 August 2021. The Institute will expect to see appropriate changes made to the Bill.
4. The Institute questioned the logic of retaining PAO s.42(1)(ia) under the Bill as the Institute’s responsibility. Taking into account the FSB’s response, the Institute accepts that this is an area where the principle of division of responsibilities applies. The Institute will continue to report allegations to the Police and provide information that is available to it to facilitate criminal prosecution under this provision.



5. The Institute questioned whether the change in wording under s.37CA(2)(d) of the Bill on sanctions from that of PAO s.35 changed the process for restoration to membership. The FSB's response explained that the provisions had been modernized and aligned with other ordinances especially the existing provisions on registration of PIE auditors in the FRCO. It also suggested that the AFRC will use suspension in less serious cases and revocation in more serious cases. If suspension is used in less serious cases the AFRC will be making a judgement that membership can be automatically restored at the conclusion of a period of suspension, assuming the period of suspension is relatively short. The Bill provisions are acceptable if these assumptions are correct. Automatic restoration after a short period of suspension is reasonable but for a longer period, say twelve months or more, there would be concerns that other requirements for membership e.g. CPD, would need to be re-confirmed. The Institute will seek further clarification from the FSB that the above assumptions and interpretations of intent are correct. If that is confirmed, the Institute will expect to see guidance on determination of suspension or revocation and period of suspension developed and published by the FRC during the transition period.

6. The Institute noted that under s.9(b)(v) of the Bill the AFRC oversight of Institute functions is extended to cover provision of training for CPD. The Institute questioned the reason for this. The FSB's response mentioned certain stakeholder expectations about the Institute's role in monitoring quality and content of training courses provided by other bodies. On this basis the proposal is that the AFRC's oversight power will not only cover exclusively the Institute's provision of its own training courses but also the Institute's performance in training in a general sense that it will also oversee courses provided by other bodies against the CPD requirements set by it.

The Institute is concerned by the FSB's suggestion that the Institute will "oversee courses provided by other bodies against the CPD requirements set by it" as there will be practical obstacles to whether this can be achieved. The Institute has no remit to regulate the CPD market that involves a vast number and variety of providers e.g. professional firms, professional bodies and commercial organisations, and in the current environment it has rapidly extended to include online providers that are not based in Hong Kong. The model of CPD adopted by the Institute for the professional development of Institute members is based on the individuals' responsibilities to choose CPD that is relevant to performing their role as a professional accountant, which covers a diverse spectrum of areas especially for professional accountants in business. The Institute exercises overview of the quality of CPD undertaken by its members through the existing CPD compliance audit as a CPA registration renewal requirement. Through the



CPD audit process, the Institute can assess the relevance and quality of CPD content and recognize the appropriate hours of CPD undertaken but this does not and cannot amount to accreditation of CPD providers, which is only possible through statutory requirements. The basic objective of AFRC oversight is to give comfort to stakeholders that the Institute properly performs its key functions, in this specific case to ensure that Institute members undertake CPD of an appropriate quality to develop relevant professional competence. The Institute proposes that the focus of AFRC oversight of CPD should be on the mechanism the Institute has in place for monitoring compliance with CPD requirements and the quality of CPD undertaken. The wording of s.9(b)(v) should be amended as follows:

- (v) providing training for qualifying for registration as, and monitoring compliance with the continuing professional development requirements for ~~of~~ certified public accountants;
7. The Institute requested that there should be an express provision under PAO s.28(2) for members to continue to meet fit and proper requirements (“FPR”) on renewal of membership. The FSB’s response acknowledged that there is no such express provision but that FPR is fundamental for the profession and should be fulfilled at all times by professional accountants. If there is any doubt on the fulfilment of FPR by any CPA, the Institute should initiate investigation and take disciplinary action where appropriate.

The Institute raised this matter to highlight that the lack of an express power to require fulfilment of the FPR on renewal of CPA registration may compromise the ability of the Institute to act in a timely manner to meet reasonable stakeholder expectations on the FPR status of CPAs under the new regime. Going forward, the Institute will no longer have investigation and disciplinary powers over CPAs. The consequence of this appears to be that in future if the Institute becomes aware of any concerns about a member’s compliance with the FPR, it will have to refer the matter to the AFRC for investigation and disciplinary action and then implement the disciplinary outcome to the extent that it affects the member’s registration. This does not seem to demonstrate commitment to protection of the public interest. The Institute will expect to see a provision in the Bill of an express power for the Registrar to act on any FPR concerns at the renewal of membership registration. The FSB’s letter to the Bills Committee dated 25 August 2021 indicates that the FSB is considering how to address this matter in the legislation.



8. Referring to the provision under s.10(1AA) for the Institute to share information requested by the AFRC, the Institute suggested that a reciprocal provision is required for the AFRC to share information with the Institute to facilitate the Institute's discharge of PAO duties, as most information sharing between the two bodies based on the above split of responsibilities will involve personal data. The FSB responded 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 or exercising statutory functions. The FSB was unaware of prominent examples showing that this need exists and suggested that a Memorandum of Understanding ("MoU") with the AFRC would be sufficient. The Institute believes that there is a need to request information from the AFRC that is essential for the Institute to exercise its statutory functions. Examples include: (i) information on members status as practising certificate holders or disciplinary records to facilitate risk based sampling in the CPD audit process which is an exercise linked to the statutory annual membership renewal process to check compliance with CPD requirements set by the Institute in Statement 1.500; and (ii) checks on ongoing disciplinary proceedings to process membership resignation applications (under PAO s.49(3) the Institute's Council can refuse to accept a resignation application if the member is subject to disciplinary proceedings). All the necessary information is currently held by the Institute but in future will be held by the AFRC. The Institute is also of the view that a MoU may not be the appropriate way to facilitate sharing of personal or other sensitive data. The Institute suggests that a provision for information to be provided to the Institute by the AFRC is included in the Bill.
9. The Institute questioned why PAO s.39 had been removed as this provision allowed a route for restoration to membership. Having further considered the consequences of removal of s.39, the Institute is satisfied that without s.39 there will be no further restoration of membership removed as a result of missing deadlines during the renewal process beyond the period allowed by PAO s.27(2)(a) and s.28(2)(a) .
10. The Institute questioned why in Part 4A Levies under s.50G of the Bill, the AFRC retained a power to inspect the Institute's accounts as the responsibility for collecting levies will be with the AFRC under s.50C. The FSB responded that it would review the provision. The Institute will expect to see s.50G removed from the Bill.

11. The Institute questioned whether the extensive provisions regarding Student Disciplinary Committee under Part VIII of the PAO By-Law for student discipline were necessary and that a general power for the Institute's Council to appoint committee/personnel to investigate and discipline registered students would be more efficient and proportionate. The FSB's response concluded that the Institute's Council may make use of these provisions to appoint a panel and committees to handle student disciplinary cases as it sees fit. Based on past experience the number of disciplinary cases involving registered students will be very low, generally only two or three per year, and does not warrant complex statutory provisions such as appointment of a panel of individuals from which committees will be convened. It is also the case that for all complaints, including those against registered students, the majority are resolved without the need to convene a disciplinary committee. The Institute maintains the view that more efficient and proportionate operational arrangements could be established by reducing the number of specific provisions e.g. establish and maintain a panel of persons from which disciplinary committees are convened, and granting a general power to the Institute's Council.

The key element of the Institute's suggested alternative student disciplinary arrangements would be to amend By-Law 33A to make the student disciplinary committee a standing committee, the equivalent of the Institute's existing Professional Conduct Committee, with powers vested directly in the committee or delegated from the Institute's Council. By-Law 34 to By-Law 36A would be simplified, while retaining the principle intentions, to make operation of the arrangements efficient and proportionate to the anticipated caseload. Complaints received would be considered directly by the committee and the committee would adjudicate and apply sanctions as appropriate. The Institute will continue to work with the Government to develop provisions to enable viable student disciplinary arrangements.

In summary and subject to the outcome of further discussions with the FSB on matter noted above, the Institute would like to propose the following amendments to the Bill for the committee's consideration.

- A. To amend the provisions for the AFRC to set additional CPD requirement as conditions on granting or renewal of practising certificate under s.20AAB(3) and s.20AAG(3). [item 3]
- B. To amend s.9(b)(v) to provide for a workable approach to AFRC oversight of the Institute's monitoring of compliance with CPD requirements. [item 6]



- C. To include an express requirement in PAO s.28(2) for Institute members to continue to meet the fit and proper requirement (FPR) on renewal under the PAO s.24(1)(b). [item 7]
- D. To include a reciprocal provision for the AFRC to share information with the Institute to facilitate the Institute's discharge of PAO duties to mirror the provision under s.10(1AA) requiring the Institute to share information with the AFRC. [item 8]
- E. To remove the power Under Part 4A Levies s.50G for the AFRC to inspect the Institute's accounts as the AFRC will be responsible for collecting levies under s.50C. [item 10]
- F. To replace provisions regarding Student Disciplinary Committee under Part VIII of the PAO By-Law for student discipline (s.33A to s.36 inclusive) with proposed alternative provisions to enable the Institute to investigate and discipline registered students in a proportionate and efficient manner. [item 11]

If the suggested changes are acceptable to the Bills Committee but it is not possible, through time constraints or other reasons, to make the necessary changes to the Bill we would suggest that they should be made through subsidiary legislation before the effective date of the main legislation.

For completeness, the Institute would also like to remind the Bills Committee that the Bill includes requirements for the AFRC to develop and publish policies and guidelines on scope and application of a number of functions and powers of the AFRC before the effective date of the new legislation. The areas to be covered should include:

- Application of AFRC AMLO regulatory powers and responsibilities; [item 1]
- Requirements and procedures for issuance of practising certificates and registration of practice units; [item 2]
- Setting additional Continuing Professional Development ("CPD") requirements as conditions on granting or renewal of a practising certificate; [item 3]
- Sanctions guidelines to include criteria for determination of suspension or revocation of CPA membership and period of suspension; [item 5]
- Inspection of non-PIE auditors (under the principle of proportionality); and
- Investigation and sanctioning of practice units and CPAs (under the principle of proportionality).



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

We trust that our submissions will be considered favourably. If the Bills Committee requires further explanation or clarification of any of the above comments and proposals please contact me at ce@hki CPA.org.hk.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Margaret Chan'. The signature is fluid and cursive.

Margaret W.S. Chan
Chief Executive and Registrar