

**立法會**  
**Legislative Council**

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**Paper for the House Committee Meeting  
on 23 July 2021**

**Legal Service Division Report on  
Financial Reporting Council (Amendment) Bill 2021**

**I. SUMMARY**

- 1. The Bill**

The Bill seeks to amend the Financial Reporting Council Ordinance (Cap. 588) to:

  - (a) enhance the independence of the regulatory regime for accounting professionals;
  - (b) regulate accounting professionals through registration, issuing practising certificates, inspection, investigation and disciplinary sanction;
  - (c) rename the Financial Reporting Council ("FRC") and provide for the new functions of FRC; and
  - (d) provide for related matters.
  
- 2. Public Consultation**

The Administration has explained the policy objectives and the reform proposal under the Bill to FRC and the Hong Kong Institute of Certified Public Accountants ("HKICPA"), and has engaged with major accounting bodies, accounting professionals and practices, and some trade groups who are users of professional accounting services. Stakeholders are generally supportive of the direction of the proposed reform.
  
- 3. Consultation with LegCo Panel**

The Panel on Financial Affairs was consulted on the legislative proposals on 5 July 2021, and members had no objection to the introduction of the Bill into the Legislative Council.
  
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill, and will report further, if necessary. As the Bill seeks to reform the regulatory regime for accounting professionals and to create new functions for FRC as an independent regulator in lieu of the Council of HKICPA, Members may wish to form a Bills Committee to study the Bill in detail.

## II. REPORT

The date of First Reading of the Bill is 21 July 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: ACCT/2/1/2C) issued by the Financial Services and the Treasury Bureau on 14 July 2021 for further details.

### Object of the Bill

2. The Bill seeks to amend the Financial Reporting Council Ordinance (Cap. 588) to:

- (a) enhance the independence of the regulatory regime for accounting professionals;
- (b) regulate accounting professionals through registration, issuing practising certificates, inspection, investigation and disciplinary sanction;
- (c) rename the Financial Reporting Council ("FRC") and provide for the new functions of FRC; and
- (d) provide for related matters.

### Background

3. At present, Cap. 588 provides for, among others, FRC's function as an independent oversight body for registered and recognized PIE-auditors<sup>1</sup> and the regulatory regime of these auditors. The Bill seeks to, among others, extend FRC's regulatory functions to cover all certified public accountants ("CPAs") by transferring certain regulatory powers currently exercised by the Council of the Hong Kong Institute of Certified Public Accountants ("HKICPA Council") in respect of accounting professionals under the Professional Accountants Ordinance (Cap. 50) to FRC. According to paragraph 7 of the LegCo Brief, the proposed arrangement would align the regulatory regime of the accounting profession in Hong Kong with international standard and practice. The key proposed amendments are summarized in the ensuing paragraphs.

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<sup>1</sup> According to sections 3 and 3A of Cap. 588 and section 2(1) of Cap. 50, a registered PIE-auditor is, in gist, a local CPA (practising), a firm of CPAs (practising) or a corporate practice registered under Cap. 588 as an auditor of any public interest entity ("PIE"), i.e. a listed corporation the listed securities of which comprise at least shares or stocks or a collective investment scheme that is or was listed. According to sections 20ZE, 20ZF and 20ZT of Cap. 588, a recognized PIE auditor is, in gist, an overseas or Mainland auditor recognized by FRC for carrying out a PIE engagement (such as the preparation of an auditor's report in relation to the annual accounts required to be prepared under the Listing Rules) for an overseas entity or a Mainland corporation listed in Hong Kong.

## **Provisions of the Bill**

### Expansion of FRC's regulatory functions under Cap. 588

#### *Registration and issuance of practising certificates to CPAs*

4. At present, Cap. 50 provides for, among others, the functions of the HKICPA Council in respect of a CPA's application for a practising certificate, and the registration of a CPA, a firm of CPAs (practising) ("CPA firm") and a corporate practice. Clause 19 of the Bill seeks to add a new Part 2A to Cap. 588 to provide for, among others, certain new functions of FRC (which is proposed to be renamed as the "Accounting and Financial Reporting Council" ("AFRC")) under clause 10 of the Bill) including:

- (a) issuing practising certificates to CPAs and registration of CPA firms and corporate practices under the proposed new sections 20AAB, 20AAD, 20AAT and 20AAZN of Cap. 588; and
- (b) establishing and maintaining a register of the practice units, i.e. CPAs (practising), CPA firms and corporate practices, under the proposed new section 20AAZZI of Cap. 588.

5. The proposed new Part 2A of Cap. 588 would also provide for the relevant offences, including pretending to be a CPA (practising) or signing audit reports without a valid practising certificate, which would be punishable by a fine at level 4 (\$25,000) and imprisonment for 12 months (see the proposed new sections 20AAZZL and 20AAZZM of Cap. 588).

#### *Inspection, investigation, disciplinary matters and sanctions in relation to CPAs and practice units*

6. At present, while FRC is responsible for the inspection, investigation, discipline and sanction of PIE-auditors, CPAs and practice units (collectively "professional persons")<sup>2</sup> are regulated by the HKICPA Council (or the relevant committees or panels) under Cap. 50 except for such professional persons' engagements under the PIE-auditor regulatory regime specified in Cap. 588.

7. Clauses 42 to 71 of the Bill seek to, among others, provide for the inspection and investigation in relation to a professional person (such as ascertaining whether a CPA (practising) has observed the relevant standards under Cap. 50, or whether a professional person has committed a professional irregularity<sup>3</sup> by failing to apply the requisite

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<sup>2</sup> "Professional person" is proposed to be defined under clause 5(21) of the Bill to mean a CPA or a practice unit.

<sup>3</sup> See the proposed new section 3B of Cap. 588 sought to be added under clause 7 of the Bill for the types of conducts (such as falsification of a document) that would amount to a "professional irregularity" under Cap. 588.

professional standard). Under the proposed new Part 3AA of Cap. 588, AFRC could, among others, appoint CPA inspectors and CPA investigators for such inspections and investigations. If a professional person commits any misconduct under the proposed new section 37AA of Cap. 588 (such as a professional irregularity), AFRC could impose any sanction under the proposed new section 37CA of Cap. 588, including public or private reprimand, a pecuniary penalty not exceeding \$500,000 and revocation or suspension of a person's registration (see clause 64 of the Bill).

#### Expansion of review and appeal mechanism under Cap. 588

8. At present, the jurisdiction of the Public Interest Entities Auditors Review Tribunal ("Tribunal") under section 37O of Cap. 588 includes reviewing any "specified decision" defined by section 2(1) of Cap. 588 (including the HKICPA Council's refusal for an application to be a registered PIE-auditor). Clause 5(13) of the Bill seeks to, among others, expand the Tribunal's jurisdiction by adding to the definition of "specified decision" a list of AFRC's decisions (including AFRC's refusal to issue a practising certificate to a CPA). Clause 75(2) of the Bill seeks to consequentially rename the Tribunal as the "Accounting and Financial Reporting Review Tribunal".

#### Transitional arrangements to be provided by way of subsidiary legislation

9. Clause 98 of the Bill seeks to add a new Part 8 to Cap. 588 to provide for, among others, the power of the Secretary for Financial Services and the Treasury ("SFST") to make, by way of regulation, transitional and saving provisions consequent on the enactment of the Ordinance (if the Bill is passed) for matters including applications for the registration of practice units and the issue of practising certificates pending before the HKICPA Council under Cap. 50. Such regulation would be subsidiary legislation subject to scrutiny of LegCo pursuant to the negative vetting procedure.

#### Miscellaneous amendments

10. Clauses 14 and 100(26) of the Bill seek to add a new section 10A to Cap. 588 and a new Part 4A to Schedule 2 to Cap. 588 to provide for, among others, the establishment of a new Advisory Committee to provide advice to AFRC.

11. Clause 102 of the Bill seeks to, among others, amend Schedule 3B to Cap. 588 by adding new fees that would be charged for making copies/certified true copies of an entry in the AFRC register. According to paragraph 24 of the LegCo Brief, although the Administration does not, at present, propose to charge for the issuance of practising certificates and the registration of CPA firms and corporate practices under the Bill, such fees may be imposed in future to provide for a new source of income to fund AFRC's expanded regulatory functions.

12. In addition, Part 3 of the Bill seeks to make related and consequential amendments to Cap. 50 and the Professional Accountants By-laws (Cap. 50A) with regard to the matters stated in paragraphs 4 to 8 above, including the transfer of the relevant functions from the HKICPA Council to AFRC.

## Commencement

13. The Bill, if passed, would come into operation on a day to be appointed by SFST by notice published in the Gazette.

## **Public Consultation**

14. According to paragraph 29 of the LegCo Brief, the Administration has explained to FRC and HKICPA the policy objectives and the reform proposal under the Bill. The Administration has also engaged with major accounting bodies, accounting professionals and practices, and some trade groups who are users of professional accounting services. According to the Administration, stakeholders are generally supportive of the direction of the proposed reform. In particular, they consider that the reform would enhance the independence of regulation and the protection of the interests of users of professional accounting services.

## **Consultation with LegCo Panel**

15. As advised by the Clerk to the Panel on Financial Affairs, the Administration briefed the Panel on the legislative proposals on 5 July 2021. Members had no objection to the introduction of the Bill into LegCo and discussed various issues, including the international trend on accounting profession regulation, the funding arrangement, governance and work of the post-reform FRC, the major views and concerns expressed by stakeholders and the Administration's measures to address the concerns.

## **Conclusion**

16. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill, and will report further, if necessary. As the Bill seeks to reform the regulatory regime for accounting professionals and to create new functions for FRC as an independent regulator in lieu of the HKICPA Council, Members may wish to form a Bills Committee to study the Bill in detail.

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