

立法會
Legislative Council

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**Report of the Bills Committee on Professional Accountants
(Amendment) Bill 2022**

Purpose

This paper reports on the deliberations of the Bills Committee on Professional Accountants (Amendment) Bill 2022 (“the Bills Committee”).

Background

The new regulatory regime for the accounting profession

2. At present, the Hong Kong Institute of Certified Public Accountants (HKICPA¹) is a statutory professional body established under the Professional Accountants Ordinance (Cap. 50) (“PAO”) to regulate the accounting profession in Hong Kong. The Legislative Council (“LegCo”) passed the Financial Reporting Council (Amendment) Bill 2021 in October 2021 (enacted as the Financial Reporting Council (Amendment) Ordinance 2021) to develop the Financial Reporting Council (“FRC”) into a full-fledged independent regulator and oversight body of the accounting profession in implementing a new regulatory regime for the profession (“the new regulatory regime”).¹ Under the new regulatory regime, major regulatory powers including issuing practising certificates to certified public accountants (“CPAs”), registration of practice units and auditors of public interest entities, inspection of practice units, taking investigation and disciplinary actions against misconducts of CPAs and practice units will be transferred from HKICPA to the Financial Reporting Council

¹ The Financial Reporting Council (Amendment) Ordinance 2021 (“the Amendment Ordinance 2021”) will come into operation on 1 October 2022 (except that certain sections will come into operation on 4 July 2022) by virtue of the Financial Reporting Council (Amendment) Ordinance 2021 (Commencement) Notice published in the Gazette on 6 May 2022 (i.e. L.N. 65 of 2022).

(“FRC”) to be renamed as the Accounting and Financial Reporting Council (“AFRC”). HKICPA will remain the key institution keeping the standards of the accounting profession, and continue to be responsible for conducting professional examinations, registering CPAs, issuing and specifying standards on professional ethics, accounting, auditing and assurance and continuing professional development (“CPD”) requirements for the accounting profession, and providing training for qualifying as and CPD of CPAs, subject to AFRC’s oversight.

Composition of the Council of the Hong Kong Institute of Certified Public Accountants

3. The Council of HKICPA (“the HKICPA Council”), which is the governing body of HKICPA, consists of the following members²:

- (a) the Financial Secretary (“FS”) or his representative;
- (b) the Director of Accounting Services or his representative;
- (c) 14 CPAs elected at an annual general meeting of HKICPA;
- (d) the immediate past President of HKICPA;
- (e) four lay persons appointed by the Chief Executive; and
- (f) not more than two CPAs who are co-opted by the HKICPA Council.

4. For the 14 elected members of the HKICPA Council, a CPA only becomes a candidate for election if his/her nomination is proposed by one CPA and seconded by another CPA. The tenure of office of an elected member of the HKICPA Council is two years, and seven out of the 14 elected member seats are alternately open for election by HKICPA members every year.

Administrative procedures of the Hong Kong Institute of Certified Public Accountants

5. The administrative procedures of HKICPA are stipulated in the Professional Accountants By-laws (Cap. 50A) (“PA By-laws”). According to the Administration, HKICPA has been reviewing from time to time its administrative procedures with a view to enhancing operational efficiency.

² Section 10 of PAO provides for the establishment and composition of the HKICPA Council.

The Professional Accountants (Amendment) Bill 2022

6. The Bill was published in the Gazette on 13 May 2022 and received its First Reading at the LegCo meeting of 18 May 2022. In gist, the Bill seeks to:

- (a) for the election of elected members of the HKICPA Council, raise the number of nominations to be obtained from HKICPA members by a candidate from two CPAs (i.e. one as a proposer and the other as a seconder) to 10 CPAs (i.e. one as a proposer and nine as seconders), and impose a new requirement for the candidate to also obtain nomination from two members of the Advisory Committee to AFRC (“Advisory Committee”)³ as seconders (the proposed new Schedule 1 to PAO added by Clause 12);
- (b) align the election cycle of all the 14 elected members of the HKICPA Council from an annual cycle to a biennial cycle, and make arrangements for the continued service of elected members who have served as Vice-Presidents for at least one full Vice-President term as the elected members of the new term of the HKICPA Council (amended section 12, proposed new sections 13 and 13A of PAO under Clauses 8, 9 and 10); and
- (c) enhance the administrative procedures of HKICPA provided in PA By-laws.

The major provisions of the Bill are set out in **Appendix 1**. The Bill, if passed will come into operation on 1 November 2022.

The Bills Committee

7. At its meeting held on 20 May 2022, the House Committee agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix 2**. Under the chairmanship of Hon Edmund WONG Chun-sek, the Bills Committee has held one meeting to study the Bill with the Administration. The Bills Committee has invited the public to provide written views on the Bill, and has not received written submissions.

³ The Amendment Ordinance 2021 provides that an Advisory Committee will be established to advise AFRC on policy matters concerning any of its regulatory objectives and functions. Members of the Advisory Committee will be appointed by FS in consultation with AFRC, and they will comprise, inter alia, practitioners, service users and other stakeholders of the accounting profession.

Deliberations of the Bills Committee

Rationale for the legislative proposals in the Bill

8. The Bills Committee notes that the Administration have collected views from major accounting professional bodies and representatives on the HKICPA Council election mechanism from January to March 2022, and enquired about the rationale for putting forward the various legislative proposals in the Bill.

9. The Administration has responded that during the preparation for implementation of the new regulatory regime, it has received concerns from stakeholders of the sector about the corporate governance and election mechanism of the HKICPA Council. Besides calls for a review of the election mechanism to enable HKICPA to more effectively adjust to its professional functions and establish closer linkage with AFRC under the new regulatory regime, there are views that the current nomination requirements and threshold for the Council elections are too low, which may not be able to ensure that the elected Council members possess sufficient professional knowledge and understanding of the sector. Other concerns include that the Council election has become increasingly politicised and deviated from professionalism in recent years, which will be detrimental to the image of the Hong Kong accounting sector; and that the annual election cycle has taken up too much of HKICPA's resources and attention, making it difficult for the Council to work as a stable team and focus on professional initiatives. Some members of the profession have made various proposals to the Administration, including imposing basic requirements on the candidates for election as elected members of the HKICPA Council, increasing the number of nominations a candidate requires to obtain from HKICPA members, requiring candidates to obtain nominations from other key stakeholders of the profession, and aligning the election cycle of the 14 elected members from annual to biennial.

10. The Administration has also advised that HKICPA has previously suggested amendments to PA By-laws to allow the conduct of general meetings online or in hybrid mode (i.e. physical and virtual) against the challenges under the COVID-2019 pandemic, and to adjust the HKICPA Council election timeline to allow sufficient time for the executive team to complete the various proper election procedures.

11. The Administration has pointed out that after careful consideration of the views and suggestions from the accounting profession, it considers necessary to introduce legislative amendments to the election mechanism of the HKICPA Council and HKICPA's administrative procedures. The Administration has further engaged the stakeholders including HKICPA and major accounting bodies

to explain the policy considerations after formulation of the legislative proposals, and has obtained their general support.

12. Members of the Bills Committee in general have expressed support for the legislative proposals in the Bill which they consider are conducive to enhancing the governance and representativeness of the HKICPA Council. In particular, members considered it justified to increase the nomination requirement from two to 10 CPAs as there has not been any change to this requirement since it was stipulated in 1973 despite the fact that HKICPA's membership has grown several folds to over 40 000 at present. Moreover, the legislative proposals in the Bill would enable HKICPA to focus on professional matters and assist it to adjust to its role under the new regulatory regime, as well as allow greater flexibility in HKICPA's administrative procedures regarding the conduct of general meetings and election related matters in the light of operational needs and latest developments in technologies.

Election mechanism of the Council of the Hong Kong Institute of Certified Public Accountants

Nomination requirements for elected members

13. Members of the Bills Committee have enquired about the requirements for candidates as elected members of the HKICPA Council, the purpose for the Advisory Committee in taking up a nomination role and the criteria to be adopted by its members in seconding nominations. Some members of the Bills Committee further consider that such requirements and criteria should include that the candidates shall not politicize the business of the HKICPA Council in order to ensure that HKICPA will not deviate from professionalism. Some members are concerned whether the new nomination role of the Advisory Committee may give rise to any conflict as a candidate running for the election of the HKICPA Council may also be a present or previous member of the Advisory Committee.

14. The Administration has explained that the 14 elected members of the HKICPA Council shall be all CPAs with not less than six in full time practice, and not less than six otherwise than in full time practice.⁴ HKICPA is responsible for registering CPAs, as well as for issuing and renewing practising certificates to CPAs according to the relevant requirements (including fitness and properness of the CPAs concerned) now provided in PAO (of which the power will be transferred to the future AFRC under the Accounting and Financial Reporting Council Ordinance (Cap. 588) ("AFRCO")). As regards the new nomination role of the Advisory Committee, the Administration has clarified that section 2 of the proposed new Schedule 1 to PAO seeks to provide that the two Advisory

⁴ The meaning of a CPA "in full time practice" is provided in section 10(2A) of PAO, which, among others, includes a CPA holding a practicing certificate.

Committee members acting as seconders to a nomination must be members referred to in section 13A(1)(d) of Schedule 2 to AFRCO (i.e. those members of the Advisory Committee other than the chairperson, chief executive officer and the two executive directors of AFRC.) The new nomination requirement will motivate candidates to actively engage the Advisory Committee for support of their election platforms, and also facilitate the Advisory Committee to better understand the concerns of the accounting profession and the work priorities of the new term of the HKICPA Council. As a result, AFRC and HKICPA would enhance their working relationship which would be conducive to achieving effective regulation and development of the profession. Moreover, given that the Advisory Committee will comprise reputable members from the accounting profession, its nomination role in the HKICPA Council election would facilitate participation of representatives of different segments of the accounting profession in the HKICPA matters.

15. As regards views about criteria which members of the Advisory Committee should consider when seconding a nomination in the HKICPA Council election, the Administration has stressed that the decision would rest entirely with an individual member after taking into account relevant factors, such as the candidate's professional knowledge, background and experience in the sector, the candidate's conduct and integrity, etc. In order to assist Advisory Committee's members in making the decision in this respect, the Administration and AFRC would consider issuing relevant guidelines and providing information or records (e.g. criminal and disciplinary records, if any) about the candidates where necessary. As regards the issue of potential conflict of interests, FS, when appointing members to the Advisory Committee, would take into consideration whether there is apparent conflict with the positions being held by the appointees in HKICPA. Besides, since a secondment of nomination is to be made by individual members of the Advisory Committee instead of by the Advisory Committee en bloc, a candidate who is a present or previous member of the Advisory Committee would not have actual advantage over other candidates in obtaining nomination.

Election cycle of elected members

16. Some members of the Bills Committee note that the accounting profession has expressed concern that the proposed new biennial election cycle for all the 14 elected members of the HKICPA Council may give rise to risk of a total change of the Council membership en bloc every two years.

17. The Administration has explained that the proposed biennial election cycle for the 14 elected HKICPA Council members would spare HKICPA's resources in conducting Council election in November and December each year to fill the seven vacancies under the current requirement. Aligning the election

cycle of the 14 elected Council members would also ensure stability of the members during their two-year term which is conducive to the continuous delivery of the Council's work priorities. The Administration has pointed out that in order to address the concern about the potential change of all 14 elected Council members every two years, and for better continuity of the Council, the Bill proposes that upon conclusion of a two-year term of the Council, the eligible past Vice-Presidents (the definition is given in the proposed new section 13(6) of PAO) may, upon fulfilment of the nomination requirements for election as elected members (as set out in section 2 of the proposed new Schedule 1 to PAO), be deemed to have been elected as the elected members of the new term of the Council (as provided in the proposed new section 13(3) of PAO)⁵.

18. On the eligible past Vice-Presidents, some members of the Bills Committee have pointed out that the drafting of the proposed new section 13(3) of PAO seems to provide that a Vice-President would be deemed to have been elected and become an elected member of the HKICPA Council without having to fulfil the nomination requirements. In response to members' request, the Administration has reviewed the relevant drafting and confirmed that the proposed new section 13, as presently drafted, has reflected the policy intent regarding an eligible past Vice-President mentioned in paragraph 17 above.⁶

Administrative procedures of the Hong Kong Institute of Certified Public Accountants

19. Members of the Bills Committee have asked if the legislation governing professional bodies of other sectors have similar provisions allowing their members to attend meetings through electronic means, and whether the proposed amendments to PA-By laws have specified the detail arrangements including how members are considered present at a meeting if they attend by electronic means and how they can cast votes by show of hands or ballot, and the arrangement for attending meetings and casting votes by proxies.

20. The Administration has responded that for professional bodies of other sectors such as the legal, engineering and architectural sectors, their relevant administrative procedures are not stipulated in the law, and such bodies have the discretion and flexibility to revise their own meeting arrangements by amending their internal administrative regulations based on their operational experience and actual needs. As such, the practices of other professional bodies are not directly

⁵ However, under the proposed new section 13(4) of PAO a person who has become an elected member in the current term by virtue of his/her former capacity as a Vice-President would have to run for election in the next HKICPA Council term in order to become an elected member, even if he/she has also served as a Vice-President in the current term.

⁶ The Administration's written response is set out in LC Paper No. CB(1)363/2022(02).

comparable with HKICPA's administrative procedures which are prescribed in PA-By laws.

21. As regards the proposed amendments to HKICPA's administrative practices as provided in Part 3 of the Bill, the Administration has advised that they have reflected the proposals passed as a resolution by HKICPA at its 2020 annual general meeting. In particular, the proposal to allow HKICPA's general meetings to be held by electronic means, or both physically and by electronic means, would ensure that meetings can proceed in the face of the social distancing measures under the COVID-19 pandemic or other unforeseen circumstances.⁷ According to HKICPA, a CPA would be required to log in to the HKICPA's designated portal to attend a general meeting held by electronic means, and the CPA who has so logged in and attends the meeting would be considered present.

22. On the voting arrangements for HKICPA members who attend a meeting through electronic means, the Administration has pointed out that under the existing PA By-laws, a CPA may vote at a general meeting conducted in physical form by way of proxy. The proposed by-law 18(8) would allow voting in person or by proxy at general meetings held physically, by electronic means or both physically and by electronic means. However, due to the operational difficulty in counting votes given on a show of hands if CPAs attend a meeting by electronic means, the proposed new by-law 18(3)(d) seeks to provide that a poll must be taken in place of a show of hands if the meeting is held by electronic means, or both physically and by electronic means.

23. Regarding the arrangements for HKICPA members who attend a meeting by proxy, the Administration has advised that according to the proposed by-law 18(10), CPAs may appoint a proxy to attend a general meeting by lodging the instrument appointing the proxy, and the power of attorney or other authority (if any) with the HKICPA Registrar not less than 48 hours before the meeting concerned. The CPAs may also indicate the votes to be cast on the instrument. This would allow time for the HKICPA executives to properly record the appointments and the votes to be cast (if any), and preset the electronic voting system for proxy holders to vote on behalf of the proxy appointers at the relevant meeting to be held by electronic means. In order to ensure the accuracy in vote counting, there is a requirement in the existing by-law 18(6) that scrutineers should be appointed by the chairman of a general meeting, who would be responsible to observe the vote counting procedures and verify the voting results.

⁷ The annual general meetings of HKICPA are required to be held once in every calendar year according to the proposed section 9(2) of PAO. Also the proposal would be essential for the smooth conduct of HKICPA's general meetings, particularly since quite a number of CPAs who need to carry out audit work in the Mainland have not been able to return to Hong Kong to attend meetings in person under the COVID-19 pandemic.

Amendments to the Bill

24. The Bills Committee and the Administration will not propose amendments to the Bill.

Resumption of Second Reading debate

25. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at the Legislative Council meeting of 13 July 2022.

Consultation with the House Committee

26. The report of the Bills Committee was issued to members of the House Committee by circulation of paper on 22 June 2022.

Council Business Division 1 and Public Complaints Office
Legislative Council Secretariat
6 July 2022

**The major provisions of the Professional Accountants
(Amendment) Bill 2022**

The Bill is divided into three parts –

- (a) Part 1 sets out the short title and provides for the commencement of the Bill;
- (b) Part 2 contains amendments to the Professional Accountants Ordinance (“PAO”) (Cap. 50). The main provisions of this Part are set out as follows –
 - (i) Clauses 4, 5 and 9 amend PAO to provide for the nomination requirements for elections of President, Vice-Presidents and elected Council members (set out in a new Schedule added by Clause 12) and remove the Hong Kong Institute of Certified Public Accountants (“HKICPA”)’s power to make by-laws on such requirements;
 - (ii) Clauses 8, 9 and 10 amend PAO to align the election cycle of the elected Council members and provide for transitional arrangements, and in particular, clause 9 provides that eligible past Vice-Presidents may, upon fulfilment of the nomination requirements for election as elected members, be deemed to have been elected as the elected members of the new term of HKICPA Council;
 - (iii) Clauses 12 adds a new Schedule to PAO to provide for the nomination requirements for candidates for election as elected Council members, Presidents and Vice-Presidents, and adds a new section 54 to empower the Secretary for Financial Services and the Treasury to amend the new Schedule by notice published in the Gazette; and
- (c) Part 3 contains amendments to the Professional Accountant By-laws (“PA By-laws”). The main provisions of this Part are set out as follows –

- (i) Clauses 16 and 19 consequentially amend PA By-laws to remove existing provisions on nomination requirements (which are to be provided for in PAO);
- (ii) Clauses 16, 20 and 22 amend PA By-laws to adjust certain deadlines and periods for lodging papers and giving notices so as to facilitate HKICPA's administrative procedures; and
- (iii) Clauses 21, 23, 24, 25 and 26 amend PA By-laws to provide for the conduct of general meetings online or in hybrid mode, the adjournment and postponement of general meetings, and the issue of notices and documents by electronic and other means.

Bills Committee on Professional Accountants (Amendment) Bill 2022

Membership list*

Chairman Hon Edmund WONG Chun-sek

Members Hon Paul TSE Wai-chun, JP
Hon YUNG Hoi-yan, JP
Hon Doreen KONG Yuk-foon
Hon Nixie LAM Lam
Hon LAM San-keung, JP

(Total : 6 members)

Clerk Ms Connie SZETO

Legal Adviser Mr Mark LAM

* Changes in membership are shown in **Annex to Appendix 2**

Bills Committee on Professional Accountants (Amendment) Bill 2022

Changes in membership

Member	Relevant date
Prof Hon Nelson LAM Chi-yuen, JP	Up to 18 June 2022