

**For discussion
4 April 2022**

Legislative Council Panel on Financial Affairs

**Progress of Preparatory Work for the New Regulatory Regime of
Accounting Profession**

PURPOSE

We plan to commence on 1 October 2022 the new regulatory regime of the accounting profession reformed under the Financial Reporting Council (Amendment) Ordinance 2021 (“the Amendment Ordinance”). This paper briefs Members on the progress of relevant preparatory work.

BACKGROUND

2. The Amendment Ordinance was enacted by the Legislative Council (“LegCo”) and published in the Gazette on 22 and 29 October 2021 respectively. According to the Amendment Ordinance, the Financial Reporting Council (“FRC”) will become a full-fledged independent regulator of the accounting profession, and will be renamed as the “Accounting and Financial Reporting Council” (“AFRC”).

3. Under the new regime, major regulatory powers in relation to the accounting profession will be transferred from the Hong Kong Institute of Certified Public Accountants (“HKICPA”) to the AFRC, including the registration of Public Interest Entities (“PIE”)¹ auditors and practice units², issue of practising certificates, inspection of practice units, and investigation and discipline of practice units and certified public

¹ A PIE refers to a corporation with issued shares or stocks listed in Hong Kong or a collective investment scheme with interests listed in Hong Kong.

² A practice unit is defined in the Amendment Ordinance as (i) a certified public accountant (practising) (“CPA (practising)”) who practises accountancy on her/her own account under his/her own name; (ii) a CPA (practising) who practises accountancy on the his/her own account under a firm name; (iii) a firm of CPAs(practising); or (iv) a corporate practice.

accountants (“CPA”). The AFRC will also oversee the HKICPA’s performance of its various statutory professional functions.

SUBSIDIARY LEGISLATION FOR COMMENCEMENT OF NEW REGIME

4. We plan to table three pieces of subsidiary legislation, i.e., the Commencement Notice for the Amendment Ordinance, the regulation on transitional arrangements and consequential amendments, and the setting of the level of fees to be collected by the AFRC for issue of practising certificates and registration of practice units under the new regime, at the LegCo in May 2022 for negative vetting.

(A) Commencement Notice

5. Section 1(2) of the Amendment Ordinance provides that the Amendment Ordinance is to come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury (“SFST”) by a notice published in the Gazette. Taking into account the progress of the preparatory work for the new regime (as illustrated in paragraphs 6 to 19 below), we target to commence the Amendment Ordinance on 1 October 2022, except for the below provisions which are planned for earlier commencement in July 2022 –

(a) Establishment of Advisory Committee

The Amendment Ordinance provides that an Advisory Committee will be established to advise the AFRC on matters of policy regarding any of its regulatory objectives and functions. Members of the Advisory Committee will be appointed by the Financial Secretary after consulting the AFRC, and will comprise, inter alia, practitioners, service users and other stakeholders of the accounting profession. For the Advisory Committee to offer advice on the preparatory work of the new regime at an early stage, we plan to commence the provisions concerning the establishment of the Advisory Committee in advance.

(b) Transitional and saving provisions to be made by regulation

The Amendment Ordinance contains a provision which enables the SFST to make transitional and saving provisions consequent

on the Amendment Ordinance by regulation. We need to commence the said provision prior to 1 October 2022, such that the SFST may timely make the necessary regulation to facilitate the FRC's preparatory work for the implementation of the new regime. For example, our draft regulation will empower the FRC to, among other things, access the HKICPA's records and information prior to the commencement of the new regime for setting up its register and building case database.

(B) Regulation on Transitional Arrangements and Consequential Amendments

6. We have, in consultation with the FRC and the HKICPA, prepared the draft regulation to provide for (a) the transitional arrangements for the handling of pending or ongoing cases upon commencement of the new regime; and (b) the consequential amendments to other Ordinances and subsidiary legislation. The key principles of the transitional arrangements for the major regulatory functions are summarised below.

Registration of PIE Auditors and Practice Units, and Issue of Practising Certificates

7. According to the Amendment Ordinance, the functions of registering PIE auditors and practice units as well as issuing practising certificates will be transferred from the HKICPA to the AFRC under the new regime. The Amendment Ordinance stipulates the criteria and requirements to be considered by the AFRC when processing applications for registration or issue of practising certificates. These criteria and requirements are largely the same as those currently provided in the Financial Reporting Council Ordinance (Cap. 588) ("FRCO") and the Professional Accountants Ordinance (Cap. 50) ("PAO").

8. Under the transitional arrangements, we will stipulate in the regulation that all registration of PIE auditors and practice units as well as practising certificates which are effective immediately before the commencement of the new regime will remain valid after the commencement date until 31 December 2022. Applications for registration or issue of practising certificates, renewals and related matters which the HKICPA has yet to finish processing by the commencement of the new regime will be handled as follows –

Subject Matter	Transitional Arrangements
(a) New applications submitted to the HKICPA before the commencement date	<p>For applications which the HKICPA has made a decision on whether to grant or refuse by the commencement date, the HKICPA will follow up on the outstanding procedures including issue of certificates or notification of reason(s) for refusal.</p> <p>For pending applications which the HKICPA has not made a decision on whether to grant or refuse by the commencement date, they will be transferred to the AFRC for decision making. Applicants need not make a new application to the AFRC.</p>
(b) Renewal applications	<ul style="list-style-type: none"> ● Applications for renewal of registration or practising certificates in 2023 should be made to the AFRC after the commencement date.
(c) Conditions imposed on registrations or practising certificates by the HKICPA before the commencement date (if any)	<ul style="list-style-type: none"> ● The conditions will remain effective after the commencement date.
(d) Decisions of revocation or suspension of registration, cancellation or suspension of practising certificate, or removal of name from the register made by the HKICPA before the commencement date (if any)	<ul style="list-style-type: none"> ● The decisions will remain effective after the commencement date. Upon the conclusion of the effective period of the decision, the relevant practice units or CPAs may submit fresh applications for registration or issue of practising certificates to the AFRC.

Practice Reviews of Practice Units, and Investigation and Discipline of Practice Units and CPAs

9. According to the Amendment Ordinance, the functions of practice review in relation to practice units and investigation and discipline of practice units and CPAs will be transferred from the HKICPA to the AFRC under the new regime. The Amendment Ordinance stipulates the scope of powers (including investigable and sanctionable misconducts, and powers of inspectors and investigators) as well as types and levels of penalties³ for the relevant functions. They largely follow those currently provided under the PAO. As regards the procedures, the AFRC, when exercising the new powers, will adopt the procedures which are carried out by the FRC executive team under the supervision of the FRC Board comprising all non-practitioners, so as to ensure impartiality and independence from the profession.

10. As regards the transitional arrangements, we will stipulate in the regulation that practice reviews, and investigation and disciplinary cases which are ongoing by the commencement date will continue to be handled under the HKICPA's mechanism in avoidance of interruption to the relevant proceedings. Upon conclusion of the ongoing practice reviews and investigation cases by the HKICPA, the cases will be referred to the AFRC for consideration of necessary follow up actions, such as initiating further inspections, imposing sanctions, etc. under the Amendment Ordinance.

11. In addition, any new case that arises on or after the commencement date, regardless of whether the matter which the case concerns took place before or after the commencement date, will be handled by the AFRC under the Amendment Ordinance.

12. Meanwhile, the FRC has been formulating administrative guidelines in relation to its exercise of various newly transferred functions. It issued documents on 9 March 2022 to consult the profession on the relevant procedures and sanctioning guidelines (including pecuniary sanctions) for the exercise of disciplinary functions under the new regime, and to illustrate the regulatory approach for other functions. The FRC will meet with different groups of stakeholders, including practice units,

³ They include the removal of a name from the register, the cancellation of a practising certificate, the issue of a reprimand, or the issue of an order to pay a penalty not exceeding \$500,000.

accounting bodies, and relevant service users, to explain the documents and address the profession’s concerns. With due consideration of stakeholders’ views collected in the engagement exercise, the FRC will finalise and publish the guidelines and other documents for the commencement of the new regime. Pursuant to the Amendment Ordinance, the FRC will also publish in the Gazette the guidelines on pecuniary sanctions in relation to practice units and CPAs before it exercises the relevant powers under the new regime.

Review and Appeal

13. According to the Amendment Ordinance, the scope of review of the existing PIE Auditors Review Tribunal (“Tribunal”) established under the FRCO will be expanded under the new regime to cover the AFRC’s decisions regarding the issue of practising certificates, registration of practice units and disciplinary actions against practice units and CPAs. Relevant persons who are dissatisfied with the determination of the Tribunal may appeal to the Court.

14. With regard to the transitional arrangements, for the relevant decisions made by the HKICPA before the commencement of the new regime or under the transitional arrangements after commencement of the new regime, relevant persons may continue to apply for review and/or appeal under the ordinances under which the decisions were made. The change in the categories of relevant decisions subject to review and/or appeal before and after the commencement of the new regime is summarised as follows –

Decisions subject to review and appeal under the FRCO	Decisions subject to appeal under the PAO
(a) Decisions made by the HKICPA before the commencement of the new regime in relation to registration of PIE auditors	(a) Decisions made by the HKICPA before the commencement of the new regime in relation to registration of practice units
(b) Decisions made by the AFRC after the commencement of the new regime in relation to issue of practising certificates, registration of PIE auditors and practice units, and disciplinary	(b) Decisions made by the HKICPA before the commencement of the new regime in relation to issue of practising certificates

actions against practice units and CPAs	<p>(c) Decisions made by the HKICPA before the commencement of the new regime in relation to disciplinary actions</p> <p>(d) Decisions made by the HKICPA under the transitional arrangements after the commencement of the new regime in relation to disciplinary actions</p>
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15. In addition to the aforementioned transitional arrangements, the regulation to be made by the SFST will also provide for relevant technical amendments to other legislation, such as changes of references to the FRC and the HKICPA due to the transfer of regulatory functions and the renaming of the FRC.

(C) Fees for Issue of Practising Certificates and Registration of Practice Units

16. Upon the transfer of powers for issue of practising certificates and registration of practice units to the AFRC, the relevant application fees previously payable to the HKICPA will be collected by the AFRC. The Government has committed to exempt the fees in the first year of the new regime. Thereafter, the AFRC will start collecting the fees which will initially be set at a level no higher than that currently collected by the HKICPA.

17. In order to bring the above arrangements into effect, we will amend the fee levels for the issue of practising certificates, registration of practice units and the relevant renewal as stipulated in the Amendment Ordinance from zero at present to the HKICPA's existing levels for commencement on 1 October 2023. We will review the fee levels after the new regime has been in operation for a period of time, and will consult the LegCo in due course.

OTHER RELEVANT PREPARATORY WORK

18. We circulated an information paper to Members in March this year on the FRC's budget for 2022/23. The FRC plans to recruit new staff in 2022/23 for the phasing-in of the new regime. The new staff will be deployed mainly for taking up the issue of practising certificates and registration of practice units upon the commencement of the new regime, following up on the investigation and disciplinary cases handed over by the HKICPA or newly arising, and preparing for the inspection of practice units. When gearing up for the relevant tasks, the FRC will maintain close liaison with the HKICPA with a view to utilising the resources, talents and experience of both parties for the smooth completion of the preparatory work for the new regime.

19. We will also coordinate various matters in relation to the transition to the new regime through regular meetings with the FRC and the HKICPA, including the discussion on the necessary subsidiary legislation, guidelines and measures for the transition, etc., and will take feedback from the accounting profession and service users into timely consideration. We will also make use of this platform to exchange views on regulatory and development issues which are of concern to the accounting profession in preparation for the implementation of the new regime.

ADVICE SOUGHT

20. Members are invited to note the progress of the preparatory work for the implementation of the new regulatory regime of the accounting profession.

**Financial Services Branch
Financial Services and the Treasury Bureau
25 March 2022**