

For discussion on 13 June 2003

Legislative Council Panel on Financial Affairs

**The Hong Kong Society of Accountants’
Private Members’ Bill on
Proposed Amendments to the Professional Accountants Ordinance
and the Professional Accountants By-laws**

PURPOSE

This paper outlines the Hong Kong Society of Accountants (HKSA)’s proposals to amend the Professional Accountants Ordinance (the Ordinance) to-

- (a) change the title of the ‘Hong Kong Society of Accountants’ to the ‘Hong Kong Institute of Certified Public Accountants’; and
- (b) improve the existing regime on the regulation of accountants;
- (c) set out an immunity provision covering the acts of persons performing statutory functions in good faith under the Ordinance;
- (d) provide for certain technical amendments to the Ordinance and the By-laws.

BACKGROUND

Change of Name

Accounting institutes in all the major jurisdictions in the world are either called institutes of chartered accountants or institutes of certified public accountants. The HKSA is one of the very few that still retains the “Society” name, and its members are designated “Associates of the

Society” whereas most other member bodies in other countries have used the CPA or CA designation. In recognition of this global trend, the HKSA proposes to align its corporate brand with an internationally recognised designation.

At the Extraordinary General Meeting of the HKSA held on 11 November 2002, a resolution was passed to change the name of the Society, its membership structure and membership designations and the descriptions of the practice units. The HKSA proposes to make the corresponding amendments to the provisions in the Ordinance to reflect such changes. The name of the Hong Kong Society of Accountants shall be changed to the Hong Kong Institute of Certified Public Accountants, with its Chinese name [香港會計師公會] remaining unchanged.

The HKSA is keen to implement these changes, having already received membership endorsement. As the Administration is unlikely to give this proposed change to the Ordinance much priority in the legislative programme this year, the HKSA would like to achieve the change, together with other proposals set out in this paper, through a Private Members’ Bill sponsored by Dr. the Hon. Eric Li.

Reform of the Regulatory Regime

Accountants play an important role in safeguarding the integrity of financial reporting. The regulatory regime of the accountancy profession should be open, effective, transparent and able to inspire the confidence of the investing public.

The regulatory regime in respect of the accountancy profession in Hong Kong is set out in the Professional Accountants Ordinance. Section 7 of the Ordinance states that one of the HKSA’s objectives is to regulate the practice of the accountancy profession and to discourage dishonourable conduct and practices by professional accountants. In the light of recent developments overseas, the HKSA has adopted a proactive approach and proposed in late January 2003 a series of measures to open up its governance structure and to improve the present regulatory processes enshrined in the law. The proposals are summarised as follows —

- (i) increase the lay members and Government appointed

officials in the HKSA Council (i.e. its governing body) from two to six;

- (ii) expand the membership of an Investigation Committee instigated by the Society's Council from three to five, and alter the composition of the Investigation Committee, with the majority of members (including the chairman) being lay persons;
- (iii) Alter the composition of the 5-member Disciplinary Committee instigated by the Society's Council, with the majority of members (including the chairman) being lay persons; and
- (iv) as a variation of (ii) above, establish an Independent Investigation Board (IIB) to deal with alleged accounting, auditing and/or ethical irregularities related to companies listed on the Stock Exchange of Hong Kong.

The HKSA is of the view that the above proposals will provide sufficient mechanisms to meet the demands of establishing adequate oversight over the conduct and work of professional accountants for the proper safeguard of public interest. The Administration's response to the HKSA's proposals are set out in the Secretary for Financial Services and the Treasury's reply to a written Legislative Council question dated 12.2.2003, a copy of which is attached at **Annex A**. The Administration welcomes the HKSA's proposals as a move in the right direction, and agrees with the HKSA that proposed changes will meet the current expectations of enhancing the independence, transparency and accountability of the HKSA as the statutory body responsible for regulating professional accountants.

The HKSA is anxious to push ahead with these reform proposals through legislative amendments. Being acutely aware of the public expectation on the profession and in the interest of promoting greater independence, transparency and accountability, it took the initiative and sought the Hon Eric Li's agreement to include the first three components of the proposals outlined above in the Private Members' Bill to expedite the reform process. A Position Paper on the above proposals was released to HKSA members on 6 June 2003. An Extraordinary General Meeting will be held on 7 July 2003 for members to vote in support of the motion.

Since the proposed Independent Investigation Board (the fourth component in the HKSA's package) is proposed to be established with separate funding outside the HKSA, the legislative changes to effect such a proposal will be the subject of separate consultation and legislation by the Administration, and is therefore not included in this legislative amendment exercise. We understand that the Administration plans to issue a consultation paper on the IIB proposal in July/August and subject to the views of the public, appropriate legislative amendments would be made at a later stage.

The HKSA emphasizes that the four components in its reform proposals put forward to the Administration should be considered as a composite package. It considers that the package as it stands balances the utilization of the existing regulatory framework with the need to keep abreast of international developments, and is the best solution for Hong Kong.

HKSA's Council

Section 10 of the Ordinance sets out the composition of the HKSA Council. It consists of 14 members, including 12 elected professional accountants and two ex-officials. The term of office for an elected member is for a period of two years. On top of this, Council may also co-opt not more than 2 professional accountants. A co-opted member is appointed for a one-year term.

Under the Ordinance, the Chief Executive is also empowered to appoint two members who are 'academics from universities' who may or may not be professional accountants. The Chief Executive has never exercised this power of appointment.

The Society now proposes to open up its governing body so that instead of two members from academia, the Chief Executive would be empowered to appoint 4 non-accountant lay members. It is proposed that the term of office of the lay members should be three years to give them more time to understand and contribute to Council business.

The opportunity is also taken to increase the number of elected members on the Council from 12 to 14. In addition to the 14 elected members on the Council, it is also proposed that the immediate past president be appointed to serve a term of one year, without going through

election, to provide continuity to the work of the Council.

If endorsed, the Council would comprise a maximum of 23 members, with a maximum of 17 professional accountants (including two co-opted members) and 6 lay members (including two ex-officials – a representative of the Financial Secretary and the Director of Accounting Services). The lay members would in future make up 26% of the total members on the Council.

The Investigation Committee

Section 42C of the Ordinance sets out the composition of an Investigation Committee appointed by the HKSA Council to investigate alleged misconduct or breaches of professional standards by its members. The Committee currently consists of 3 members drawn from a Panel. It is proposed to increase the number of members on the Committee from 3 to 5 with the majority (i.e., 3), including the Chairman, being lay members. Changes will be made to the composition of the Panels from which members are chosen.

Disciplinary Committee

Section 33 of the Ordinance provides that the chairman of a Disciplinary Committee be appointed by the HKSA Council, who in turn appoints the four members of the Committee. The function of the Disciplinary Committee is to determine whether a member or member firm should be sanctioned and the penalty to be handed down. The Committee currently consists of 5 members and may include one lay member at Council's discretion. All five are selected from a Disciplinary Panel.

It is proposed that lay members would in future form the majority of a Disciplinary Committee, and the Chairman will also be a lay person. The ratio of lay members to professional accountants will be 3:2.

The Administration will be empowered to make appointments of lay members to both the Investigation and Disciplinary Panels from which ad hoc committee members are drawn.

Powers of the Council, the Investigation Committee and the Disciplinary Committee

The opportunity is also taken to amend the powers of the Council, the Investigation Committee and the Disciplinary Committee in the light of operational experience.

The Society proposes to empower its Council to —

- (a) cancel the practising certificate of a practising accountant who is subject to a bankruptcy order;
- (b) compel a member to act in accordance with a direction made by Council in respect of registration matters, the conduct of his practice and conduct unbecoming of a professional accountant;
- (c) make continuing professional development (CPD) a condition of membership and practicing certificate renewal.

The HKSA also proposes to empower —

- (a) its Disciplinary Committee to introduce a simplified mechanism for dealing with offences of a minor and administrative nature;
- (b) its Disciplinary Committee to order the withdrawal of a member's practicing certificate either permanently or temporarily; and to determine the effective date of a disciplinary order; and
- (c) its Investigation Committee to obtain information and documents from any professional accountant other than the professional accountant who is under investigation.

The above amendments will broaden the scope of powers and sanctions available to the Society.

Introducing a majority lay element into the profession's Disciplinary and Investigation Committees will provide further assurance to the public concerning the transparency and objectivity of the Society's

investigation and sanctioning processes.

In keeping with the transparency principle, the HKSA also proposes to make public the hearings of the Disciplinary Committee except in circumstances envisaged in Article 10 of the Hong Kong Bill of Rights Ordinance. The opening up of its disciplinary hearing process is supported by HKSA members after due consultation.

Immunity Provisions

At present, immunity protection is only provided under section 32G of the Ordinance to persons involved in practice reviews. No similar protection is provided for persons involved in statutory investigation cases. This is undesirable. The HKSA therefore proposes to provide immunity to persons involved in statutory investigation. Such immunity would be in the same scope as that provided under section 32G in line with similar immunity provisions available to persons involved in disciplinary cases in respect of solicitors under section 8AA of the Legal Practitioners Ordinance.

Furthermore, the Ordinance is also silent on the protection for HKSA Council Members, other volunteer members, officers and staff of HKSA in performing duties on behalf of the HKSA in good faith. Apart from practice review and investigation functions, the HKSA is also involved in disciplinary proceedings and other statutory functions such as registration, issue of practising certificates and conduct of examinations. There is therefore a need to expand the immunity provision to the effect that no liability shall be incurred by any person in respect of any acts or omissions by him in the performance of any functions under the Ordinance, and which were conducted in good faith.

The HKSA proposes an omnibus immunity provision in the Ordinance to cover generally such acts by Council and its officers while exercising their statutory powers in good faith.

Other Miscellaneous Amendments

The HKSA also takes the opportunity to make certain miscellaneous amendments, mainly in respect of disciplinary matters. These include allowing members of the public and profession aggrieved

by a HKSA Council's decision not to refer a complaint to a Disciplinary Committee to bring a complaint directly to the Committee; to redefine 'dishonourable conduct' as a disciplinary offence; and to enable the Court of Appeal to award costs.

Also included in the amendments to the Ordinance is the power to allow the HKSA to prepare summary financial statements for distribution to members.

Amendments to By-laws

Section 8(1) of the Ordinance empowers the HKSA to make by-laws subject to the approval of the Chief Executive in Council. The HKSA proposes to update some of the provisions in the by-laws in relation to its election of Council, calling of AGMs and the minimum number of members to propose resolutions that are unrelated to the ordinary business at the AGMs.

Economic Implications

The proposed changes will not directly affect the public at large but they will help to inspire public confidence in the regulatory regime in respect of the accountancy profession. Having regard to the significant role that professional accountants play in the financial reporting framework and the governance of companies and corporations, the legislative proposals initiated by the profession would be beneficial to Hong Kong's status as an international financial centre and the development of its capital markets.

LegCo Question No. 9
(Written Reply)

Date of Meeting : 12 February 2003

Replied by :

Asked By : Hon CHAN Kam-lam

Secretary for Financial Services and
the Treasury

Question:

The Hong Kong Society of Accountants ("HKSA") may, at its discretion, form Investigation Committees and Disciplinary Committees to deal with complaints about the professional misconduct of professional accountants. It has been reported that the authorities suggested to HKSA in December last year that, to enhance the credibility of these committees, the number of lay members should be more than half of their respective membership. In response, HKSA accepted the suggestion and further proposed to set up an Independent Investigation Board to investigate cases involving alleged substandard audit work performed for listed and regulated companies. In this connection, will the Government inform this Council:

- (a) of the content and progress of the discussions between the authorities and HKSA;
- (b) whether it has estimated when the new arrangements can be implemented; and
- (c) whether it plans to have the self-regulation arrangement for the accountancy profession eventually replaced?

Reply:

Madam President,

- (a) Accountants have a duty to safeguard the accuracy and integrity of financial reporting. Conscious of the need for an effective, transparent and accountable regulatory regime that is in line with international developments, I met with representatives of the accounting profession in December 2002 to discuss ways to improve the existing regime set out in the Professional Accountants Ordinance (Cap. 50). In response to the Administration's request for enhancing the independence element in the present regulatory regime, the Hong Kong Society of Accountants (the Society) submitted detailed proposals to the Administration on 22 January 2003. The proposals

are summarised as follows --

- (i) increase the lay members in the Society's Council (i.e., the governing body);
- (ii) expand the membership of any Investigation Committee instigated by the Society's Council from three to five, and alter the composition of the Investigation Committee, with the majority of members (including the chairman) being lay persons;
- (iii) alter the composition of the 5-member Disciplinary Committee instigated by the Society's Council, with the majority of members (including the chairman) being lay persons; and
- (iv) establish an Independent Investigation Board to deal with alleged accounting, auditing and/or ethics irregularities related to companies listed on the Stock Exchange of Hong Kong.

HKSA's proposals are a move in the right direction. We intend to take forward the proposals to enhance the independence and transparency of the Society's Council and two Committees in the first instance. Implementing such proposals would require amendments to the Professional Accountants Ordinance. The proposal for an Independent Investigation Board warrants more detailed examination, in particular in the light of international developments on the oversight of the auditing profession. We will continue our dialogue with HKSA in this regard.

- (b) As mentioned in our Corporate Governance Action Plan for 2003 (presented to the Legislative Council Panel on Financial Affairs on 13 January 2003), we aim to finalize the legislative proposals to enhance the regulation of the accounting profession in the third quarter of 2003, in consultation with the Society.
- (c) In considering the development of the regulatory regime of the accounting profession, our objective is to ensure that the relevant regulatory regime is effective and transparent, inspires confidence in investors, serves the needs of Hong Kong and is in line with international trends. The nature of such regulatory regime is not a primary concern.