

**LegCo Panel on Financial Affairs**

**Extract from minutes of the special meeting  
held on 13 June 2003**

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**I Briefing on the Hong Kong Society of Accountants' Private Member's Bill on amendments to the Professional Accountants Ordinance**

(LC Paper Nos. CB(1)1908/02-03(01) & (02))

Briefing on the proposed legislative amendments

1. Dr Eric LI, in his capacity of the sponsor of the Private Member's Bill on amendments to the Professional Accountants Ordinance (PAO), briefly set out the four major components of the legislative proposals initiated by the Hong Kong Society of Accountants (HKSA). These included: changing the title of HKSA to the "Hong Kong Institute of Certified Public Accountants" while the Chinese title remained unchanged; improving the existing regime on the regulation of accountants; proposing an immunity provision covering the acts of persons performing statutory functions in good faith under the PAO; and providing for certain technical amendments to the PAO and the subsidiary legislation.

2. At the Chairman's invitation, Mr David SUN, President of HKSA, highlighted a series of measures proposed by the HKSA in late January 2003 to open up its governance structure and to improve the present regulatory process enshrined in the law. The proposals were summarized below:

- (a) increase the lay members and Government appointed officials in the HKSA Council from two to six;
- (b) expand the membership of an Investigation Committee instigated by the HKSA Council from three to five, altering its composition with majority of members (including the chairman) being lay persons;
- (c) alter the composition of the five-member Disciplinary Committee instigated by the HKSA Council, with the majority of members (including the chairman) being lay persons; and

- (d) as a variation of (c) 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.

Mr David SUN advised that the HKSA was anxious to push ahead with the above reform proposals through legislative amendments and had taken the initiative to include the proposals in (a) to (c) above in the Private Member's Bill to be sponsored by Dr Eric LI. The proposal of establishing an IIB outlined in (d) above was however not included in the Private Member's Bill as the legislative changes to effect such a proposal would be the subject of a separate consultation and legislation by the Administration.

3. At the Chairman's invitation, the Permanent Secretary for Financial Services and the Treasury (Financial Services) (PSFS) set out the Administration's views on the proposals of the HKSA. He complimented the HKSA for its initiative to improve the existing regulatory regime for the accounting profession, with full recognition of public expectations for an effective, transparent and accountable regime in line with international developments. The Administration supported HKSA's proposals for legislative amendments. In relation to the IIB proposal, while the Administration considered that it was in the right direction, given the implications of the proposal, in particular, relating to the funding arrangements for IIB, the Administration considered it appropriate to consult the public before arriving at a decision. PSFS advised that the IIB proposal would form part of the consultation paper to be issued in July/August 2003, which would also seek public views on the proposed establishment of the Financial Reporting Review Panel.

#### Discussion with members

##### *Composition of the HKSA Council*

4. Mr Henry WU noted that according to HKSA's proposal, the Chief Executive (CE) was empowered to appoint four non-accountant lay members to the HKSA Council in addition to the two ex-officials. As there was no arrangement to stagger the period of appointment, there was a possibility that all lay members were new to the work of the Council in a new term. In this connection, Mr WU expressed concern about the continuity of the work of the HKSA Council and asked whether the election and appointment of members would be arranged in a staggered manner so that not all members would be replaced at the same time. Mr WU also pointed out that there was no guarantee that CE would appoint up to the maximum number of lay members.

5. Mr David SUN advised that under HKSA's proposal, the number of elected members would increase from 12 to 14. In addition to the 14 elected members, it was 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 HKSA's proposal was endorsed, the HKSA Council would comprise a maximum of 23 members, with a maximum of 17 professional accountants and six lay members (including two ex-officials - a representative of the Financial Secretary and the Director of Accounting Services). Appointment periods of the lay members could be staggered to provide continuity. PSEFS added that the Administration intended to make full use of this appointment mechanism to appoint four lay members to the HKSA Council.

*Independent Investigation Board*

6. Mr Henry WU expressed concern about the operation of the proposed IIB, in particular, the mechanism to trigger off an IIB investigation. He opined that as the majority of the members on the HKSA Council were professional accountants, he was concerned about the degree of independence of IIB if investigation of alleged cases was to be decided by the HKSA Council. In reply, Mr David SUN said that the idea was to establish an IIB as a statutory body under the PAO that would take on referral cases of alleged accounting, auditing and/or ethical irregularities of professional accountants related to listed companies for investigation without routing through the HKSA. The composition of IIB had yet to be decided.

7. As to Mr Henry WU's concern over the role of other market regulators in investigation of cases of alleged misconduct and irregularities, PSEFS explained that as provided under the Securities and Futures Ordinance (SFO), the Securities and Futures Commission (SFC) could refer relevant cases to the HKSA for investigation and disciplinary actions. The investigation and disciplinary proceedings taken by the HKSA in accordance with the PAO would not replace or impede the necessary actions to be taken by SFC under SFO. PSEFS confirmed that the Hong Kong Exchanges and Clearing Limited (HKEx), as a market regulator, would also refer cases to the HKSA for investigation and disciplinary actions, where appropriate.

8. Mr James TIEN sought clarification on the difference between the present investigation mechanism administered by the HKSA and that of the proposed IIB. Given the fact that the majority of HKSA members were working in companies incorporated in overseas jurisdictions, Mr TIEN opined that the proposed IIB might not be able to investigate cases involving overseas parties or with the accounting/auditing work conducted outside Hong Kong. Dr Philip WONG also expressed concern about the possible overlap of the investigation duties undertaken by SFC, the HKSA Investigation Committee and the proposed IIB.

9. In reply, Mr David SUN advised that at present, all cases of alleged misconduct or breaches of professional standards by professional accountants were investigated by the HKSA at its own cost. In the present set-up, there were two panels, one comprising entirely members of the accounting profession and the other with lay members, to appoint committees on investigation and disciplinary cases respectively. The scope of these committees was confined to alleged misconduct or breaches of professional standards by its members. They could not carry out comprehensive investigation for cases of alleged accounting/auditing irregularities where other parties, such as the directors of listed companies, were involved. The proposal of establishing an IIB to deal with such alleged cases relating to listed companies could fill the existing gap in the terms of investigation powers.

10. Dr Eric LI added that the Administration could investigate and take legal actions against members of the HKSA with the powers given under other legislation such as the SFO and the Companies Ordinance. Cases involving breaches of professional standard or misconduct would also be referred to the HKSA for disciplinary actions. The Investigation Committee appointed by the HKSA would not investigate alleged criminal offences but would await until the court had given its judgement and the case had been referred to the HKSA. The HKSA had the legal obligation to take necessary disciplinary actions against its member if he/she was convicted of a criminal offence. HKSA members who felt aggrieved by the decision of the Disciplinary Committee could appeal to the court but other statutory bodies such as the SFC could not challenge or change the decision.

11. Referring to recent incidents involving falsified financial reports of listed companies in overseas jurisdictions, Mr CHAN Kam-lam sought information on the percentage of criminal cases among the total number of misconduct/breaches cases handled by the HKSA in the past years. In reply, Mr David SUN said that the HKSA did not have the requested information at present as decisions had yet to be made by the Investigation Committee on cases involving serious misconduct. He further explained that given the complexity of the cases under investigation, the HKSA would not be able to comment at this stage whether the alleged misconduct or breaches would be substantiated or the reasons behind the increase in number of such cases in recent years.

*Process of the proposed legislative amendments*

12. Mr James TIEN doubted the need for the HKSA to initiate the legislative amendments under a Private Member's Bill and felt that these could be incorporated in the amendments to be introduced by the Administration later on. In response, Mr David SUN and Dr Eric LI advised that the HKSA intended to expedite the legislation process of its proposed measures so that it could respond quickly to international developments and public expectations of the accounting profession. As the proposal of IIB had to be further considered after the public

consultation in July/August, the HKSA planned to put in place the proposed improvement measures as soon as possible by introducing the Private Member's Bill into the LegCo.

13. Mr SIN Chung-kai expressed support for the legislative proposals of the HKSA in principle and commended the HKSA for its initiatives in working out measures to improve the effectiveness and transparency of its self-regulatory regime. He however considered that the process had taken too long and there was still no concrete timetable for the implementation of the IIB. Pointing out that the Democratic Party supported the proposal of establishing an IIB, Mr SIN sought HKSA's view on the source of funding for the operation of the proposed IIB.

14. In response, Mr David SUN said that the HKSA had proposed that the IIB should be established with separate funding outside the HKSA, which might be arranged through market-financing or government subsidies.

15. Regarding government subsidies, PSFS advised members that it was a traditional practice for professional bodies in Hong Kong to be self-regulated with the regulatory activities funded by the market. The Administration would remain open-minded in taking forward the IIB proposal during the public consultation while at the same time mindful of the aforesaid traditional practice in considering any proposal for government subsidies for the operation of the IIB.

16. Mr SIN Chung-kai opined that while he appreciated the need to consult the public on the legislative proposals, he cautioned further delay in addressing the deficiencies in the present regime. Ms Emily LAU pointed out that the regulatory regime of the accounting profession should be open, effective, transparent and able to inspire the confidence of the investing public. Ms LAU urged the Administration to expedite the legislative process for the establishment of the IIB though she was aware that the investigation and disciplinary mechanisms for misconduct and breaches involving the accounting profession might not be effective enough to deter dishonourable acts even after the establishment of the IIB.

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