

**FINAL
VERSION
23.3.2004**

LEGISLATIVE COUNCIL BRIEF

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 2004

Introduction

The Chief Executive granted his consent for the Bill to be introduced before the Legislative Council on 24 March 2004. This Bill is introduced under Article 74 of the Basic Law by Legislative Council member, Dr. Hon. Eric Li Ka-cheung, GBS, JP. The Financial Affairs Panel of the Legislative Council was consulted regarding the Bill on 13 June 2003, and Members supported the general objectives of the Bill.

Purpose

2. Amendments to the Professional Accountants Ordinance (the Ordinance) are proposed to-
- (a) improve the existing regime on the regulation of accountants;
 - (b) broaden the scope of powers and sanctions available to the Hong Kong Society of Accountants (“HKSA”) and provide for certain technical amendments to the Ordinance and the By-laws in the light of operational experience;
 - (c) set out an immunity provision covering the acts of persons performing statutory functions in good faith under the Ordinance; and
 - (d) change the title of the ‘Hong Kong Society of Accountants’ to the ‘Hong Kong Institute of Certified Public Accountants’ and the designation of its members from “Professional Accountants” to “Certified Public Accountants”.

Background

Reform of the Regulatory Regime

3. 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 confidence of the investing public.

4. 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 response to the Secretary for Financial Services and the Treasury's request, the HKSA put forward in late January 2003 a series of proposals to open up its governance structure and to improve the present regulatory processes enshrined in the law. The proposals are summarised as follows-

- (a) increase the lay members and Government appointed officials in the HKSA Council (i.e. its governing body) from two to six;
- (b) expand the membership of an Investigation Committee instigated by the HKSA Council from three to five, and alter the composition of the Investigation Committee, with the majority of members (including the chairman) being lay persons;
- (c) alter the composition of the 5-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 (b) above, establish an Independent Investigation Board (IIB) to deal with alleged accounting, auditing and/or ethics irregularities related to the audit of companies listed on the Stock Exchange of Hong Kong.

5. 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 HKSA's proposals are set out in the Secretary for Financial Services and the Treasury' reply to a written Legislative Council question dated 12.2.2003, copy at the **Annex**. The Administration welcomes HKSA's proposals as a move in the right direction, and considers the proposals are key steps in enhancing the oversight of the HKSA's key functions and thus the oversight over the accounting profession. HKSA intends to implement the proposals set out in paragraph 4(a) to (c) above as the first step.

6. As implementing such proposals require legislative amendments, the HKSA took the initiative and sought the Hon. Eric Li's agreement to sponsor a Member's Bill to expedite the reform process. The above proposals are supported by HKSA members at the Extraordinary General Meeting held on 7 July 2003.

7. Since the proposed IIB (paragraph 4(d) above) warrants more detailed examination, the legislative changes to effect such a proposal are the subject of a separate consultation and legislation by the Administration, and are therefore not included in this legislative amendment exercise. The Administration issued a consultation paper on the IIB proposal in September 2003 and will report on the outcome of the consultation at the Financial Affairs Panel Meeting on 2 April 2004.

8. The HKSA envisages that the amendment to give effect to the IIB in its proposed form would not conflict with its present opening-up proposals. In any event, the HKSA expects that it would take some time before any legislative proposals on the IIB could be finalized, and so in the interest of promoting transparency and accountability, the HKSA finds it necessary to proceed with the opening-up proposals in the first instance.

HKSA Council

9. Section 10 of the Ordinance sets out the composition of the HKSA Council. Presently HKSA has 16 members, including 12 elected members, 2 co-opted members (both elected members and co-opted members are professional accountants) and two ex-officials. The term of office for an elected member is for a period of two years. A co-opted member is appointed for a one-year term.

10. Under the Ordinance, the Chief Executive is also empowered to appoint two members who are 'academics from universities or other education institutions which provide courses of instruction in accountancy'. The Chief Executive has not exercised this power of appointment in the past.

11. The HKSA now proposes to open up its Council so that instead of two members from the academia, the Chief Executive would be empowered to appoint 4 non-accountant lay members.

12. 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.

13. If endorsed, the HKSA 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 Panels/Committee

14. Section 42C of the Ordinance sets out the composition of an Investigation Committee appointed by the HKSA Council to investigate into alleged misconduct or breaches of professional standards by members of the HKSA. The Investigation Committee currently consists of 3 members drawn from an Investigation Panel. Under the Bill, section 42B of the Ordinance will be amended so that there will be 2 Investigation Panels from which an Investigation Committee is formed. Investigation Panel A will comprise not less than 18 lay members appointed by the Chief Executive and Panel B will comprise not less than 12 professional accountants appointed by the Council. It is proposed to increase the number of members on the Investigation Committee from 3 to 5, so that lay members (i.e., 3 drawn from Panel A), including the chairman will form the majority of each Investigation Committee. All five members of the Investigation Committee will be appointed by a convenor to be appointed by the Chief Executive from Panel A.

Disciplinary Panels/Committee

15. 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 of the HKSA should be sanctioned and the penalty to be handed down. The Disciplinary Committee currently consists of 5 members and may include one lay member at HKSA Council's discretion. All five are selected from a Disciplinary Panel.

16. Under the Bill, the Disciplinary Panels/Committee will be reformed similar to the arrangements of the Investigation Panels/Committee, i.e., there will be 2 Disciplinary Panels from which a Disciplinary Committee is formed. Lay members, including the chairman will form the majority of a Disciplinary Committee. The ratio

of lay members to professional accountants will be 3:2.

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

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

The HKSA 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 continuous professional development (CPD) a condition of membership renewal.

The HKSA also proposes to empower -

- (a) its Disciplinary Committee
 - (i) to order the withdrawal of a member's practising certificate either permanently or temporarily; and to determine the effective date of a disciplinary order; and
 - (ii) to issue a consent order rather than conduct a disciplinary hearing for lesser offences; and
- (b) its Investigation Committee to obtain information and documents from any HKSA member or member firm other than the HKSA member or member firm who are under investigation.

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

19. Introducing a majority lay element into the profession's Disciplinary and Investigation Committees would provide further assurance to the public on the transparency and objectivity in the HKSA's investigation and sanctioning processes.

20. In keeping with the transparency principle, the HKSA also proposes to make public the hearings of the Disciplinary Committee except in the interest of justice, the Disciplinary Committee shall determine that the hearing shall not be held in public. The opening up of the disciplinary hearing process is supported by HKSA members after due consultation.

Immunity Provisions

21. At present, immunity protection is only provided under section 32G of the Ordinance to persons involved in practice reviews. However, no similar protection is provided for persons involved in statutory investigation and disciplinary cases. The HKSA therefore proposes to provide immunity to persons involved in statutory investigation and disciplinary proceedings. Such immunity, extended to persons involved in statutory investigation, would be in the same scope as that provided under section 32G and 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. The immunity for persons involved in disciplinary proceedings is modelled on similar immunity provisions under section 53A of the Buildings Ordinance.

22. Furthermore, the Ordinance is also silent on the protection for members of the HKSA Council and its committees, the Registrar, officers and employees of HKSA in performing duties on behalf of the HKSA in good faith. Apart from practice review, investigation and disciplinary functions, the HKSA is also involved in other statutory functions such as registration, issue of practicing certificates and conduct of examinations. There is 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 omission by him in good faith in the performance of any functions under the Ordinance.

23. The HKSA proposes an immunity provision in the Ordinance to cover generally such acts by members of the Council, its officers and persons to whom any powers or duties of the Council is delegated while exercising their statutory powers in good faith.

Change of Name

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

25. At the Extraordinary General Meeting of the HKSA held on 11 November 2002, a resolution was passed to change the name of the HKSA, 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.

Other Miscellaneous Amendments

26. 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 require a Disciplinary Committee to be constituted to enable him to present his case directly to the Committee; to allow a professional accountant or registered student to be represented by lawyers or other persons with the leave of the Disciplinary Committee at its hearings; to redefine ‘dishonourable conduct’ as a disciplinary offence; and to enable the Court of Appeal to award costs.

27. 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

28. 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.

The Bill

29. An explanatory memorandum explaining the purpose of the Bill and the other clauses of the Bill is set out on pages 76 – 85 of the Bill.

Legislative Timetable

30. The proposed legislative timetable is as follows -

Financial Affairs Panel	13 June 2003
Publication in the Gazette	19 March 2004
Member in charge of the Bill gives notice of intention to present the Bill to the Clerk of the Legislative Council	16 March 2004
First Reading and commencement of Second Reading debate	24 March 2004
Resumption of Second Reading, Committee Stage and Third Reading	To be notified

Economic Implications

31. 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.

Public Consultation

32. The Financial Affairs Panel has considered the Bill and Members supported the provisions therein. The Hong Kong Society of Accountants has indicated its full support for the Bill.

Publicity

33. The Bill was published in the Gazette on 19 March 2004.

Enquiries

34. Any enquiries about this brief can be directed to Ms. Winnie Cheung Chi Woon, Chief Executive and Registrar of the Hong Kong Society of Accountants at telephone number 2287 7037 or fax number 2865 6603.

Date: 24 March 2004

**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.