

## **LEGISLATIVE COUNCIL BRIEF**

Professional Accountants Ordinance  
(Chapter 50)

### **Professional Accountants (Amendment) Bill 2022**

#### **INTRODUCTION**

At the meeting of the Executive Council on 26 April 2022, the Council ADVISED and the Chief Executive ORDERED that the Professional Accountants (Amendment) Bill 2022 (the Bill) at **Annex** should be introduced into the Legislative Council (LegCo).

#### **JUSTIFICATIONS**

2. The Bill aims to amend the election mechanism of the Council of the Hong Kong Institute of Certified Public Accountants (HKICPA) and enhance the HKICPA's administrative procedures.

3. The LegCo passed the Financial Reporting Council (Amendment) Bill 2021 in October 2021 to enhance the regulatory regime of the accounting profession in Hong Kong. Under the new regime, major regulatory powers<sup>1</sup> will be transferred from the HKICPA to the Financial Reporting Council (FRC) for independent regulation of the accounting profession, and will be renamed as the Accounting and Financial Reporting Council (AFRC). Meanwhile, the HKICPA will continue to be responsible for conducting professional examinations, registering certified public accountants (CPA), 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 the CPD of CPAs, subject to the AFRC's oversight. Under the new regime planned for commencement in Q4 2022, the HKICPA will remain the key institution keeping the standards of the profession.

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<sup>1</sup> They include the powers to issue practising certificates and register practice units and Public Interest Entities (PIE) auditors, inspect practice units, and investigate and discipline certified public accountants and practice units.

4. Currently, 14 out of the 21 HKICPA Council members are elected members, with seven of them alternately open for direct election by HKICPA members every year for a term of two years. During the preparation for implementation of the new regime, we have received concerns regarding the corporate governance and election mechanism of the HKICPA Council from stakeholders of the sector. There is a call for a review of the election mechanism to enable the HKICPA to more effectively adjust to its professional functions, as well as establish closer linkage with the AFRC under the new regulatory regime of the accounting profession. In particular, some consider 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. Some are concerned 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. In addition, some opine that the annual election cycle has taken up too much of the HKICPA's resources and attention, making it difficult for the Council to work as a stable team and to focus on professional initiatives.

5. In the light of the above, some members of the profession have made various proposals to the Government, including mainly (1) more representatives of different segments of the profession be allowed to join the HKICPA Council through enhancing the role and function of co-opted Council members and lay members<sup>2</sup>; (2) the number of nominations from HKICPA members required for running the election (currently from two members) be increased; (3) candidates be required to obtain nominations from other key stakeholders of the profession; (4) imposing basic requirements on the candidates, such as prior experience in Council business or specific professional background, and be of good conduct and integrity; and (5) a new nomination vetting committee comprising key stakeholders be established to vet the qualification and validity of nomination of candidates for performing the HKICPA's statutory functions.

6. As regards the election cycle, in order to spare the HKICPA's efforts in conducting Council elections annually, some propose aligning the election cycle of the 14 elected Council members from annually to biennially; and the term of office of elected Council Members as well as

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<sup>2</sup> A lay member refers to a member of the HKICPA Council who is not a CPA or a member of an accountancy body which is a member of the International Federation of Accountants.

the annual election of the Presidents and Vice-Presidents be adjusted correspondingly if needed.

7. Separately, the HKICPA has been reviewing its administrative procedures as stipulated in the Professional Accountants By-laws (Chapter 50 subsidiary legislation A) (PA By-laws). The HKICPA has previously suggested amendments to the 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-19 pandemic, and to adjust the HKICPA Council election timeline to allow sufficient time for the executive team to complete the various proper election procedures.

8. After careful consideration of the views and suggestions from the accounting profession, we agree that it is necessary to review the election mechanism for better governance and representativeness of the HKICPA Council, and to enable the HKICPA to become a more effective conduit between the AFRC and the profession. When considering specific proposals to be taken forward, we are mindful that the changes should be conducive to the HKICPA's role under the new regulatory regime without creating unnecessary burden. The enhanced linkage between the HKICPA and the AFRC should not undermine the AFRC's independence, or the HKICPA's capacity in handling professional matters. Changes should also be acceptable to the key stakeholder representatives of the profession in order to be effectively implemented.

### **The Legislative Proposals**

9. We propose to introduce legislative amendments to –
- (a) raise the number of nominations to be obtained from HKICPA members by a candidate from two (i.e. one as a proposer and the other as a seconder) to ten (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 the AFRC as seconders in order to stand for the HKICPA Council election;
  - (b) align the election cycle of all the 14 elected Council members of the HKICPA to become biennially and make arrangements for the continued service of elected members who have served as Vice-Presidents for at least one full Vice-President term (eligible past Vice-Presidents) as the elected members of the new term of the HKICPA Council; and

- (c) enhance the administrative procedures of the HKICPA provided in the PA By-laws.

***Nomination threshold for elected Council members election***

10. The current requirement for a candidate of Council elections to be nominated by two CPAs was stipulated in 1973 and has not changed since then despite the fact that the HKICPA's membership has grown several folds to over 40 000 CPAs now. Raising the requirement for nomination from two to ten CPAs will enhance the representativeness of the candidates.

11. Under the new regulatory regime of the accounting profession, the AFRC and the HKICPA will need to maintain a close working relationship in order to achieve effective regulation and development of the profession in parallel. The AFRC, being an independent regulator of the profession, cannot have in its Board any accounting practitioners. We proposed in the legislative exercise in 2021 to establish an Advisory Committee to the AFRC, the members of which include the Chairperson, Chief Executive Officer and not more than two executive directors of the AFRC, as well as eight to 12 other persons to be appointed by the Financial Secretary (FS) after consulting the AFRC. These persons will include practitioners, service users and other stakeholders of the accounting profession. The Advisory Committee may advise the AFRC on matters of policy regarding any of its regulatory objectives and functions. While it does not have decision-making power, it will serve as a conduit between the AFRC and the accounting profession, assisting the AFRC to formulate regulatory approach that caters to the development needs of the profession.

12. We consider that the Advisory Committee may also assume the important role as a conduit in the HKICPA Council elections. We propose to require that a candidate in the HKICPA Council election should obtain nominations from two Advisory Committee members who are not from the AFRC management. This proposal will motivate candidates to actively engage the Advisory Committee for support of their election platforms, whereby encouraging CPAs with serious professional aspirations to run in the elections. Meanwhile, it will 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, such that they may effectively channel the profession's views to the AFRC while keeping the AFRC's independence from the profession

intact. As the Advisory Committee will comprise reputable members from the accounting profession, its nomination role in the HKICPA Council election will facilitate participation of representatives of different segments of the accounting profession in the HKICPA matters.

13. We have considered whether candidates of the HKICPA Council elections should be required to obtain nominations from other bodies or persons related to the accounting profession. We are of the view that confining the nomination requirements within the relevant statutory bodies of the regulatory regime of the accounting profession (i.e., AFRC and HKICPA membership) can better preserve the professional role of the HKICPA Council from other political influence. We have also assessed whether the suggestion of establishing a new nomination vetting committee for vetting the qualification, conduct and integrity of the candidates should be adopted. Our proposed enhanced nomination requirements should suffice to effectively eliminate frivolous or unprofessional candidates, such that the HKICPA members should be able to elect competent candidates into the Council to serve the profession through fair and regular elections. We do not see a strong case for establishing a new nomination vetting committee.

#### ***Election cycle of elected Council members***

14. At present, the HKICPA conducts Council election in November and December each year to fill the seven vacancies which takes up a lot of the HKICPA Council's resource and attention. Aligning the election cycle of the 14 elected Council members to biennial will spare the resources of the HKICPA and 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 HKICPA members can also readily assess the achievements of the Council for election of appropriate Council members for the next term. Meanwhile, the one-year term of the President and Vice-Presidents will not affect the stability of the whole Council and therefore could remain unchanged.

15. During our engagement with the profession, there were concerns about the risk of a total change of HKICPA Council membership potentially arising from the election of all 14 elected Council members en bloc every two years. With a view to having better continuity of the Council, we will amend the Professional Accountants Ordinance (Chapter 50) (PAO) to the effect that upon conclusion of a two-year term of the Council, the 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 the Council<sup>3</sup>. Meanwhile, other vacancies will remain to be determined by ballot (unless the number of candidates does not exceed the number of vacancies to be filled, in which case no ballot is to be held).

16. In terms of the transitional arrangement, assuming the amendments will take effect before the next HKICPA Council election in end-2022, we will extend the term of the seven Council members elected in end-2020 as well as the term of the President and Vice-Presidents elected in end-2021 to until end-2023, such that the HKICPA does not need to conduct any elections in end-2022, and will have a stable leadership to handle with the implementation of the new regulatory regime. The arrangement concerning eligible past Vice-Presidents in the preceding paragraph is applicable to the Vice-Presidents elected in end-2021, if they will serve until end-2023.

#### *HKICPA's administrative procedures*

17. We will supplement the provisions in the PA By-laws regarding the procedures of general meetings to allow greater flexibility, which includes –

- (a) enabling the HKICPA to conduct general meetings online or in hybrid mode;
- (b) enabling the HKICPA to adjourn an ongoing general meeting with the meeting's consent, or to adjourn an ongoing meeting or postpone an upcoming meeting for health or safety reasons; and
- (c) enabling the HKICPA to send notices or documents by electronic and other means.

18. We will also extend the timeframe for the lodging of nomination papers and circulation of the list of candidates for election by the HKICPA's Registrar from seven to 14 days in the PA By-laws, so as to allow sufficient time for the HKICPA executive team to verify the information in the nominations. Consequential amendments are required to other provisions in the PA By-laws.

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<sup>3</sup> However, 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 Council term in order to become an elected member, even if he/she has also served as a Vice-President in the current term.

## **OTHER OPTIONS**

19. Introducing legislative amendments to the PAO and the PA By-laws is the only option to modify the statutory election mechanism and enhance procedural effectiveness of the HKICPA.

## **THE BILL**

20. 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 PAO. The main provisions of this Part are set out as follows –
  - (i) Clauses 4, 5 and 9 amend the 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 HKICPA's power to make by-laws on such requirements;
  - (ii) Clauses 8, 9 and 10 amend the 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 the HKICPA Council;
  - (iii) Clause 12 adds a new Schedule to the 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 PA By-laws. The main provisions of this Part are set out as follows –

- (i) Clauses 16 and 19 consequentially amend the PA By-laws to remove existing provisions on nomination requirements (which are to be provided for in the PAO);
- (ii) Clauses 16, 20 and 22 amend the PA By-laws to adjust certain deadlines and periods for lodging papers and giving notices so as to facilitate the HKICPA's administrative procedure; and
- (iii) Clauses 21, 23, 24, 25 and 26 amend the 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.

## **LEGISLATIVE TIMETABLE**

21. The legislative timetable will be –

Publication in the Gazette	13 May 2022
First Reading and commencement of Second Reading debate in LegCo	18 May 2022
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **IMPLICATIONS OF THE PROPOSAL**

22. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, productivity, environmental, sustainability, family or gender implications. The HKICPA is a statutory professional body which is self-financed and employs its own staff. Therefore, the proposal does not have any financial or civil service implications on the Government. The amendments proposed in the Bill will not affect the current binding effect of the PAO.



## **PUBLIC CONSULTATION**

23. We have collected views from major accounting professional bodies and representatives on the HKICPA Council election mechanism from January to March 2022. They generally agreed that there is a need to review and enhance the existing election mechanism of the HKICPA Council. After formulation of the legislative proposal, we have further engaged the stakeholders including the HKICPA and major accounting bodies to explain the policy considerations. We also consulted the Panel on Financial Affairs of LegCo on 4 April 2022 and received support for our proposal.

## **PUBLICITY**

24. A press release will be issued on the gazettal of the Bill. A spokesperson will be made available for answering media enquiries.

## **BACKGROUND**

25. The HKICPA is a statutory professional body established under the PAO. The HKICPA Council, which is the governing body of the HKICPA, consists of –

- (a) the FS, or a person appointed by him as his representative;
- (b) the Director of Accounting Services, or a person appointed by him as his representative;
- (c) 14 CPA elected at an annual general meeting of the HKICPA, each of whom shall on the day of the meeting be ordinarily resident in Hong Kong and of whom at the time of election –
  - (i) not less than six shall be CPAs in full time practice as CPAs (practising);
  - (ii) not less than six shall be CPAs otherwise than in full time practice as CPAs (practising);
- (d) the immediate past President of the HKICPA who shall, unless he is also an elected member, hold office as a member of the HKICPA Council for a period from the time when he ceased to

be President until the conclusion of the annual general meeting next occurring;

- (e) four lay persons appointed by the Chief Executive; and
- (f) not more than two CPAs who are co-opted by the HKICPA Council at the first meeting of the Council held after the annual general meeting, or as soon thereafter as practicable.

26. Currently, the HKICPA is responsible for the regulation of the accounting profession with powers of registration, practice review, investigation and discipline, except for the powers in relation to PIE auditors which have been transferred to the FRC for independent regulation since 1 October 2019. In 2021, the Government pursued a further reform to develop the FRC into a full-fledged independent regulatory and oversight body for various practitioners and practices of the accounting profession. We target to implement the new regime of the accounting profession on 1 October 2022.

## **ENQUIRIES**

27. Enquiries relating to this Brief can be directed to Mr Eric LEE, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2528-9016.

**Financial Services and the Treasury Bureau**  
**11 May 2022**

**Professional Accountants (Amendment) Bill 2022**

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## A BILL

### To

Amend the Professional Accountants Ordinance to provide for the nomination of candidates for the election of the President and Vice-Presidents of the Hong Kong Institute of Certified Public Accountants and elected members of the Council of the Institute; to change the election cycle of the elected members; and to make related and miscellaneous amendments (including amendments to the Professional Accountants By-laws).

Enacted by the Legislative Council.

### Part 1

#### Preliminary

##### 1. Short title and commencement

- (1) This Ordinance may be cited as the Professional Accountants (Amendment) Ordinance 2022.
- (2) This Ordinance comes into operation on 1 November 2022.

## Part 2

### Amendments to Professional Accountants Ordinance

2. **Professional Accountants Ordinance amended**  
The Professional Accountants Ordinance (Cap. 50) is amended as set out in this Part.
3. **Section 2 amended (interpretation)**
- (1) Section 2(1), definition of *elected member*—  
**Repeal**  
“member of the Council elected under section 10(2)(c)”  
**Substitute**  
“certified public accountant who becomes an elected member of the Council under section 13”.
- (2) Section 2(1), English text, definition of *Vice-President*—  
**Repeal**  
“the Vice-President”  
**Substitute**  
“a Vice-President”.
- (3) Section 2(1)—  
**Repeal the definition of appointed day.**
- (4) Section 2(1)—  
**Add in alphabetical order**  
“*election AGM* (選舉周年大會) means an annual general meeting of the Institute at which an election of elected members is held;”.

4. **Section 4 amended (appointment of President and Vice-President)**
- (1) Section 4, heading—  
**Repeal**  
“Appointment of President and Vice-President”  
**Substitute**  
“President and Vice-Presidents”.
- (2) Section 4—  
**Repeal subsection (1)**  
**Substitute**  
“(1) There are to be a President and 2 Vice-Presidents of the Institute, who are to be elected by the Council from elected members who become candidates as described in section 1 of Schedule 1.”.
- (3) Section 4(5)—  
**Repeal**  
“shall be deemed to occur when a person is temporarily absent from Hong Kong or”  
**Substitute**  
“is deemed to occur when a person”.
5. **Section 8 amended (power of Institute to make by-laws)**  
Section 8(1)—  
**Repeal paragraph (n)**  
**Substitute**  
“(n) subject to sections 4(1) and 13(2), providing for the procedure for the nomination and election of the President, Vice-Presidents and elected members;”.

**6. Section 9 amended (general meetings)**

- (1) Section 9(1), Chinese text—

**Repeal**

“週”

**Substitute**

“周”.

- (2) Section 9(2)—

**Repeal**

“shall be held not less than once in every calendar year, and not more than 15 months after the holding of the last preceding”

**Substitute**

“is to be held once in every calendar year, and not more than 15 months after the holding of the last”.

- (3) Section 9(3), Chinese text—

**Repeal**

“週”

**Substitute**

“周”.

**7. Section 10 amended (establishment and composition of the Council)**

- (1) Section 10(2)(c)—

**Repeal**

“elected at an annual general meeting of the Institute, each of whom shall on the day of the meeting”

**Substitute**

“who become elected members under section 13, each of whom must on the day of the relevant election AGM”.

- (2) Section 10(2)—

**Repeal paragraph (d)****Substitute**

“(d) a person who is the immediate past President, but is not an elected member; and”.

- (3) After section 10(2A)—

**Add**

“(2B) A person who becomes a member of the Council pursuant to subsection (2)(d) is to hold office as a member of the Council from the time when the person so becomes a member of the Council until the conclusion of the next annual general meeting of the Institute.”.

- (4) Section 10(4), Chinese text—

**Repeal**

“週”

**Substitute**

“周”.

- (5) After section 10(5)—

**Add**

“(6) In subsection (2)(d)—

*immediate past President* (去屆會長) means a person who ceases to be President at the conclusion of the last annual general meeting of the Institute in accordance with section 4(2).”.**8. Section 12 amended (compulsory retirement of elected members)**

- (1) Section 12—

**Repeal subsection (1)**

**Substitute**

“(1) An elected member is to retire from office immediately before the conclusion of the first election AGM held after the elected member becomes such a member.”.

(2) Section 12—

**Repeal subsection (1A).****9. Section 13 substituted**

Section 13—

**Repeal the section****Substitute****“13. Election of certified public accountants as elected members**

- (1) An election of elected members (*general election*) is to be held every other calendar year at an election AGM.
- (2) Subject to subsections (3) and (5), elected members are to be elected from certified public accountants who are on the day of the election AGM ordinarily resident in Hong Kong and who become candidates as described in section 2 of Schedule 1.
- (3) Each candidate who is an eligible past Vice-President (if any) is deemed to have been elected and becomes an elected member at the conclusion of the election AGM.
- (4) Subsection (3) does not apply to a candidate if the candidate became an elected member at the conclusion of the last election AGM under that subsection.
- (5) If the number of candidates who are not an eligible past Vice-President—
  - (a) exceeds the number of vacancies for elected members that are not filled under subsection (3), the

election for those vacancies must be determined by ballot, and the candidates so elected become elected members at the conclusion of the election AGM;

- (b) equals the number of vacancies for elected members that are not filled under subsection (3), those candidates are deemed to have been elected and become elected members at the conclusion of the election AGM; or
- (c) is less than the number of vacancies for elected members that are not filled under subsection (3)—
  - (i) those candidates are deemed to have been elected and become elected members at the conclusion of the election AGM; and
  - (ii) the Chief Executive may appoint a certified public accountant to fill such a vacancy remaining unfilled at the conclusion of the election AGM, and the accountant becomes an elected member on the appointment.

(6) In this section—

*eligible past Vice-President* (合資格前副會長), in relation to the general election held at an election AGM, means—

- (a) a candidate who—
  - (i) was elected as a Vice-President at the first meeting of the Council held after the last annual general meeting of the Institute; and
  - (ii) has held that office for the whole period from the date of the election as a Vice-President until immediately before the general election; or
- (b) a candidate who—

- (i) was elected as a Vice-President at the first meeting of the Council held after the last election AGM;
- (ii) has held that office for the whole period from the date of the election as a Vice-President until the conclusion of the last annual general meeting of the Institute; and
- (iii) is still an elected member immediately before the general election.”.

**10. Section 13A added**

After section 13—

**Add****“13A. Transitional arrangements in relation to Professional Accountants (Amendment) Ordinance 2022 ( of 2022)**

- (1) For the purposes of section 13(1), the first election of elected members after 1 November 2022 (*first general election*) is to be held at the annual general meeting of the Institute held in 2023 (*2023 AGM*).
- (2) A certified public accountant who holds office as an elected member at the beginning of 1 November 2022 is to retire from office immediately before the conclusion of the 2023 AGM, unless the accountant is deemed by virtue of section 15(1) to have vacated office as a member of the Council.
- (3) If, but for this subsection, the President and Vice-Presidents would have held office until the conclusion of the annual general meeting of the Institute held in 2022 in accordance with section 4(2), they are to hold office until the conclusion of the 2023 AGM, unless they—

- (a) resign their offices by notice in writing delivered to the Registrar; or
  - (b) are deemed by virtue of section 15(1) to have vacated their offices as members of the Council.
- (4) Despite the definition of *eligible past Vice-President* in section 13(6), in relation to the first general election, the reference to eligible past Vice-President in section 13 is a reference to a candidate who—
- (a) was elected as a Vice-President at the first meeting of the Council held after the annual general meeting of the Institute held in 2021; and
  - (b) has held that office for the whole period from the date of the election as a Vice-President until immediately before the first general election.”.

**11. Section 15 amended (vacation of office by Council members)**

Section 15—

**Repeal subsection (2)****Substitute**

- “(2) A person who becomes a member of the Council pursuant to section 10(2)(d) is deemed to have vacated office as a member of the Council under a circumstance set out in subsection (1)(a), (b), (c), (d) or (e), but no vacancy is to arise on the vacation of office.”.

**12. Section 54 and Schedule 1 added**

After section 53—

**Add**



**“54. Secretary for Financial Services and the Treasury may amend Schedule 1**

The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 1.

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### Schedule 1

[ss. 4, 13 & 54]

### Candidates

**1. Candidates for election as President and Vice-Presidents**

An elected member only becomes a candidate for election as President or a Vice-President of the Institute if—

- (a) the elected member is nominated in the following way—
  - (i) the elected member is proposed by 1 member of the Council; and
  - (ii) the proposal is seconded by another member of the Council; and
- (b) the elected member is willing to serve as President or a Vice-President if elected.

**2. Candidates for election as elected members**

A certified public accountant only becomes a candidate for election as an elected member of the Council if—

- (a) the accountant is nominated in the following way—
  - (i) the accountant is proposed by 1 certified public accountant; and

- (ii) the proposal is seconded by another 9 certified public accountants and 2 members of the Advisory Committee referred to in section 13A(1)(d) of Schedule 2 to the Accounting and Financial Reporting Council Ordinance (Cap. 588); and
  - (b) the accountant is willing to serve as an elected member if elected.”.
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**Part 3****Amendments to Professional Accountants By-laws****13. Professional Accountants By-laws amended**

The Professional Accountants By-laws (Cap. 50 sub. leg. A) are amended as set out in this Part.

**14. Part IA heading added**

Before by-law 1—

**Add**

**“Part IA****Preliminary”.****15. By-law 1A added**

Part IA, after by-law 1—

**Add**

**“1A. Interpretation**

In these by-laws—

*present* (出席) means present in person, whether physically or by electronic means.”.

**16. By-law 2 amended (nominations of members of Council)**

(1) By-law 2, heading—

**Repeal**

**“Nominations of members of Council”**

**Substitute**

**“Procedure for nomination of candidates for election as elected members”.**

(2) By-law 2—

**Repeal paragraphs (1A) and (1).**

(3) By-law 2(2)—

**Repeal**

**“referred to in paragraph (1) shall”**

**Substitute**

**“of a certified public accountant as a candidate for election as an elected member of the Council, in accordance with section 2 of Schedule 1 to the Ordinance, must”.**

(4) By-law 2(2)(a), after the semicolon—

**Add**

**“and”.**

(5) By-law 2(2)—

**Repeal subparagraph (b).**

(6) By-law 2(3)—

**Repeal**

**everything after “(2)”**

**Substitute**

**“must be lodged with the Registrar not less than 31 days before the election AGM.”.**

(7) By-law 2(5)—

**Repeal**

**“shall, not less than 17 days prior to the annual general meeting”**

**Substitute**

“must, not less than 17 days before the election AGM”.

- (8) By-law 2—

**Repeal paragraph (6).**

**17. By-law 3 amended (ballot for elected members of Council)**

- (1) By-law 3(1)—

**Repeal**

“13(1)(b) of the Ordinance, the Registrar shall, not less than 17 days prior to the annual general meeting”

**Substitute**

“13(5)(a) of the Ordinance, the Registrar must, not less than 17 days before the election AGM”.

- (2) By-law 3(4)—

**Repeal**

everything after “papers”

**Substitute**

“must be returned to the Registrar not less than 72 hours before the election AGM.”.

- (3) By-law 3—

**Repeal paragraph (5)**

**Substitute**

“(5) The Council is to meet before the election AGM to receive from the auditor of the Institute the confidential report referred to in paragraph (4A) and to eliminate the candidates receiving the lowest number of votes until the number of candidates left equals the number of vacancies, and those candidates left are elected.”.

- (4) By-law 3(6)—

**Repeal**

“shall have a casting vote to determine which of such candidates shall be deemed to have been”

**Substitute**

“has a casting vote to determine which of the candidates is”.

**18. By-law 9 amended (adjournment of meetings of Council)**

- (1) By-law 9(1)—

**Repeal**

“shall be transacted at an adjourned”

**Substitute**

“may be transacted at a resumed”.

- (2) By-law 9(2)—

**Repeal**

“shall not be necessary to give notice of an adjourned”

**Substitute**

“is not necessary to give notice of a resumed”.

**19. By-law 12 substituted**

By-law 12—

**Repeal the by-law**

**Substitute**

**“12. Procedure for election of President and Vice-Presidents**

- (1) No debate is allowed for the nomination of an elected member as a candidate for election as President or a Vice-President in accordance with section 1 of Schedule 1 to the Ordinance.

- (2) If there is more than one candidate for election as President or there are more than 2 candidates for election as Vice-Presidents, the election must be determined by ballot.”.

**20. By-law 13 amended (general meetings of Institute)**

By-law 13(3)—

**Repeal**

everything after “paragraph”

**Substitute**

“(2) must be issued by the Registrar within 35 days of the receipt of the request.”.

**21. By-law 13A added**

After by-law 13—

**Add**

**“13A. Mode of general meetings of Institute**

- (1) The Council may resolve to enable certified public accountants to attend a general meeting of the Institute, whether physically or by electronic means, by simultaneous attendance.
- (2) The proceedings of a general meeting are valid if the chairman of the meeting is satisfied that members of the Council and certified public accountants attending the meeting as a whole have a reasonable opportunity to participate in the business for which the meeting is called.”.

**22. By-law 14 substituted**

By-law 14—

**Repeal the by-law**

**Substitute**

**“14. Notice of general meetings of Institute**

- (1) The Registrar must give notice of a general meeting of the Institute to each certified public accountant in a form and way that the Council may determine, specifying—
- (a) the date and time of the meeting;
- (b) the general nature of the business to be transacted at the meeting; and
- (c) the place at which, or electronic means by which, the meeting is to be held, or both.
- (2) The notice must be given not less than 35 days before the general meeting, unless the meeting is—
- (a) a resumed general meeting referred to in by-law 16 or 18A; or
- (b) a postponed general meeting referred to in by-law 18B.”.

**23. By-law 16 amended (quorum of general meetings of Institute)**

- (1) By-law 16(1)—

**Repeal**

“shall”

**Substitute**

“present in person or by proxy”.

- (2) By-law 16(2)—

**Repeal**

everything after “no”

**Substitute**

“quorum—

- (a) the meeting must be adjourned; and
- (b) the adjournment is for not less than 1 week and not more than 4 weeks.”.

(3) After by-law 16(2)—

**Add**

“(2A) Subject to paragraph (2)(b), the resumed general meeting is to be held on a date, at a time, and at a place or by electronic means (or both), that the Council may determine.”.

(4) By-law 16—

**Repeal paragraph (3)**

**Substitute**

“(3) At the resumed general meeting, the certified public accountants present in person or by proxy constitute a quorum and have full power to transact the proposed business of the meeting that was adjourned.”.

(5) By-law 16(4)—

**Repeal**

“Paragraph (2) shall”

**Substitute**

“Paragraph (2)(b) does”.

(6) After by-law 16(4)—

**Add**

“(5) A certified public accountant may appoint a proxy for the resumed general meeting by an instrument in accordance with by-law 18(9) and (10).

- (6) For the purposes of this by-law, a certified public accountant is present in person or by proxy at a general meeting if the accountant or the accountant’s proxy attends the meeting at a place or by electronic means (or both) determined by the Council.”.

**24. By-law 18 amended (procedure at meetings of Institute)**

(1) By-law 18(1)—

**Repeal**

everything after “resolution” and before “be decided”

**Substitute**

“(or an amendment to the resolution) proposed and seconded at a general meeting of the Institute must be put to the meeting by the chairman and, subject to paragraphs (2) and (3), must”.

(2) By-law 18—

**Repeal paragraph (3)**

**Substitute**

“(3) Subject to paragraph (7), a poll must be taken on a resolution (or an amendment to the resolution) proposed and seconded at a general meeting—

- (a) if a poll is requested by not less than 10 certified public accountants present immediately after the declaration by the chairman of the result of a show of hands under paragraph (1);
- (b) if a request for a poll in writing is signed and submitted to the chairman before the dissolution or adjournment of the meeting by not less than 10 certified public accountants present;
- (c) if a poll is requested by the chairman; or

(d) if the meeting is held by electronic means, or both physically and by electronic means.”.

(3) By-law 18—

**Repeal paragraphs (7) and (8)**

**Substitute**

“(7) No poll may be taken for the election of the chairman or the adjournment of a general meeting, unless the meeting is held by electronic means, or both physically and by electronic means.

(8) A certified public accountant may vote on a show of hands or, if a poll must be taken under paragraph (3), on a poll, whether physically or by electronic means—

(a) in person; or

(b) by proxy, but only on the business specified in the notice of the general meeting.”.

(4) By-law 18(10)—

**Repeal**

everything after “a proxy” and before “may”

**Substitute**

“has no effect unless the instrument appointing the proxy, and the power of attorney or other authority (if any) under which it is signed, is lodged with the Registrar not less than 48 hours before the time for holding the meeting at which the proxy proposes to vote, or within a shorter time that the Council”.

**25. By-laws 18A and 18B added**

Part III, after by-law 18—

**Add**

**“18A. Adjournment of general meetings of Institute**

(1) The chairman of a general meeting of the Institute may adjourn the meeting at which a quorum (*original quorum*) is constituted if—

(a) a majority of certified public accountants present and voting consents to the adjournment; or

(b) it appears to the chairman that the adjournment is necessary for—

(i) protecting the health or safety of any person attending the meeting; or

(ii) ensuring that the business of the meeting is conducted in an orderly manner.

(2) The resumed general meeting is to be held on a date, at a time, and at a place or by electronic means (or both), that the Council may determine.

(3) The quorum for the resumed general meeting is the same as the original quorum.

(4) The only business that may be transacted at the resumed general meeting is the business left unfinished at the meeting that was adjourned.

(5) A certified public accountant may appoint a proxy for the resumed general meeting by an instrument in accordance with by-law 18(9) and (10).

**18B. Postponement of general meetings of Institute**

(1) The Council may postpone a general meeting of the Institute if the Council considers that the postponement is necessary for—

(a) protecting the health or safety of any person attending the meeting; or

- (b) ensuring that the business of the meeting is conducted in an orderly manner.
- (2) In considering whether the postponement is necessary, the Council may take into account any factor including whether, on the day of the meeting—
- (a) a gale warning, a rainstorm warning or any other similar warning is or will be in force at any time; and
- (b) any restriction of movement or other similar mandatory measure imposed by the Government is in force.
- (3) The postponed general meeting is to be held on a date, at a time, and at a place or by electronic means (or both), that the Council may determine.
- (4) The quorum for the postponed general meeting is the same as the quorum for the general meeting, or resumed general meeting, that was postponed.
- (5) The only business that may be transacted at the postponed general meeting is—
- (a) for a postponed general meeting—the business specified in the notice of the general meeting; or
- (b) for a postponed resumed general meeting—the business left unfinished at the meeting that was adjourned.
- (6) A certified public accountant may appoint a proxy for the postponed general meeting by an instrument in accordance with by-law 18(9) and (10).
- (7) In this by-law—
- gale warning* (烈風警告) has the meaning given by section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62);

*rainstorm warning* (暴雨警告) has the meaning given by section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62).”.

## 26. Part XII added

After Part XI—

**Add**

### “Part XII

### Communication

#### 49. Giving or issuing notices and documents

- (1) Except as otherwise provided in the Ordinance or these by-laws, a notice or document to be given or issued under the Ordinance or these by-laws by the Institute, Council or Registrar to a certified public accountant may be given or issued—
- (a) by delivering it by hand to the recipient at the recipient’s registered address or any other address designated by the recipient for the purpose of receiving notices and documents;
- (b) by sending it by post to the recipient at the recipient’s registered address or any other address designated by the recipient for that purpose;
- (c) by sending it by electronic mail to the recipient at the electronic mail address designated by the recipient for that purpose; or
- (d) (other than a notice of a general meeting of the Institute to be given under by-law 14) by publishing it on the Institute’s website.

- (2) Unless the contrary is proved, a notice or document is deemed to be received by the relevant recipient—
- (a) if delivered by hand—when it is delivered to the recipient at the recipient’s registered address or the address designated under paragraph (1)(a);
  - (b) if sent by post—on the second business day after the day on which it is sent to the recipient at the recipient’s registered address or the address designated under paragraph (1)(b);
  - (c) if sent by electronic mail—when it is sent to the recipient at the electronic mail address designated under paragraph (1)(c), unless the sender receives a delivery failure notification indicating that the electronic mail has not been sent to that electronic mail address; or
  - (d) if published on the Institute’s website—when it is made available on the Institute’s website in a form that enables the recipient to read and keep a copy of it.
- (3) In proving delivery, sending or publication in accordance with this by-law, a certificate in writing signed by the Registrar certifying the actions taken for, and the time of, the delivery, sending or publication is conclusive evidence of the facts stated in it.
- (4) Except as otherwise provided in the Ordinance or these by-laws, a notice or document required to be given under the Ordinance or these by-laws by a certified public accountant to the Council or Registrar must be—
- (a) in a form;
  - (b) signed in a way; and
  - (c) given within a period,

that the Council may determine.

- (5) In this by-law—

*business day* (業務日) means a day other than—

- (a) a Saturday;
- (b) a public holiday; or
- (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).”



### Explanatory Memorandum

The purposes of this Bill are—

- (a) to amend the Professional Accountants Ordinance (Cap. 50) (*principal Ordinance*)—
    - (i) to provide for the nomination of the following candidates in the principal Ordinance (instead of in the Professional Accountants By-laws (Cap. 50 sub. leg. A) (*By-laws*))—
      - (A) candidates for election as President and Vice-Presidents of the Hong Kong Institute of Certified Public Accountants (*Institute*); and
      - (B) candidates for election as elected members of the Council of the Institute (*Council*); and
    - (ii) to change the election cycle of the elected members;
  - (b) to amend the By-laws, consequential to the amendments mentioned in subparagraph (a); and
  - (c) to make minor amendments to the principal Ordinance and to amend certain provisions of the By-laws in relation to other administrative matters.
2. The Bill is divided into 3 Parts.

#### Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

#### Part 2—Amendments to Professional Accountants Ordinance

4. Clause 3 amends section 2(1) of the principal Ordinance to amend and repeal certain existing definitions and to add a new definition.

5. Clause 4 amends section 4 of the principal Ordinance to provide for candidates for election as President or Vice-Presidents of the Institute (see also section 1 of the new Schedule 1 added to the principal Ordinance by clause 12), and to amend the provision providing for when a casual vacancy is deemed to occur.
6. Clause 5 substitutes section 8(1)(n) of the principal Ordinance to make clear that the power of the Institute to make by-laws providing for the procedure for the nomination and election of the President, Vice-Presidents and elected members is subject to the relevant provisions of the principal Ordinance.
7. Clause 6 amends section 9(2) of the principal Ordinance to provide that an annual general meeting of the Institute is to be held once in every calendar year. That clause also makes minor amendments to the Chinese text of section 9 of the principal Ordinance.
8. Clause 7 amends section 10 of the principal Ordinance to make use of the definition of *election AGM* (added to section 2(1) of the principal Ordinance by clause 3(4)) and to make drafting improvement to the provision.
9. Clause 8 substitutes section 12(1) of the principal Ordinance to provide that an elected member is to retire from office immediately before the conclusion of the first annual general meeting of the Institute at which an election of elected members is held after the elected member becomes such a member. That clause also repeals section 12(1A) of the principal Ordinance which is spent.
10. Clause 9 substitutes section 13 of the principal Ordinance to—
  - (a) provide that an election of elected members is to be held every other calendar year;
  - (b) provide for candidates for election as elected members (see also section 2 of the new Schedule 1 added to the principal Ordinance by clause 12);

- (c) provide that each candidate who is an eligible past Vice-President (as defined by that section 13) is deemed to have been elected and becomes an elected member; and
  - (d) stipulate how the remaining vacancies for elected members are to be filled.
11. Clause 10 adds new section 13A to the principal Ordinance to provide for transitional arrangements as follows—
- (a) the first election of elected members after 1 November 2022 (*first general election*) is to be held at the annual general meeting of the Institute held in 2023 (*2023 AGM*);
  - (b) the term of office of the elected members as at the beginning of 1 November 2022 is extended until immediately before the conclusion of the 2023 AGM;
  - (c) the term of office of the incumbent President and Vice-Presidents is extended until the conclusion of the 2023 AGM; and
  - (d) in relation to the first general election, the arrangement applicable to an eligible past Vice-President in the new section 13 is applicable to the incumbent Vice-Presidents if certain conditions are fulfilled.
12. Clause 11 substitutes section 15(2) of the principal Ordinance to make drafting improvement to the provision.
13. Clause 12 adds new section 54 and new Schedule 1 to the principal Ordinance. The new Schedule 1 provides for candidates for election as President, Vice-Presidents and elected members, and the new section 54 empowers the Secretary for Financial Services and the Treasury to amend that Schedule.

### Part 3—Amendments to Professional Accountants By-laws

14. Clause 14 adds a new Part heading before by-law 1 of the By-laws.

15. Clause 15 adds new by-law 1A to the By-laws to clarify the meaning of *present* in the By-laws.
16. Clause 16 consequentially amends by-law 2 of the By-laws, and brings forward the deadline for lodging the relevant nomination paper and notice.
17. Clause 17 amends by-law 3 of the By-laws to make use of the definition of *election AGM* (added to section 2(1) of the principal Ordinance by clause 3(4)) and to make other minor amendments.
18. Clause 18 makes minor amendments to by-law 9 of the By-laws.
19. Clause 19 consequentially amends by-law 12 of the By-laws.
20. Clause 20 amends by-law 13(3) of the By-laws to lengthen the period within which the Registrar must issue a notice calling a general meeting of the Institute, in relation to a request mentioned in by-law 13(2) of the By-laws.
21. Clause 21 adds new by-law 13A to the By-laws to enable the Institute to hold general meetings physically or by electronic means, or both.
22. Clause 22 substitutes by-law 14 of the By-laws to bring forward the deadline for the Registrar to give notice of a general meeting of the Institute, and to provide for related matters.
23. Clause 23 amends by-law 16 of the By-laws to provide for—
- (a) the presence of certified public accountants in person or by proxy for the purpose of constituting a quorum at a general meeting of the Institute that may be held physically or by electronic means, or both; and
  - (b) the adjournment of a general meeting for absence of quorum.
24. Clause 24 amends by-law 18 of the By-laws to amend the circumstances in which a poll is or is not to be taken, and to make other minor amendments to administrative matters.

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25. Clause 25 adds new by-laws 18A and 18B to the By-laws to provide for the adjournment or postponement of a general meeting of the Institute in certain circumstances.
  26. Clause 26 adds new Part XII to the By-laws to elaborate on how notices and documents may be given or issued.